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Letter dated 3 July 1999 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission commenced its thirty-sixth session at Geneva on 13 June 2000. The session, which was scheduled to conclude on 15 June, was adjourned on that date until 30 June 2000. Delegations from Kuwait, Iraq and the Sudan addressed the Council at its opening plenary meeting.

During the session the Council considered four reports and recommendations made by the Panels of Commissioners in the D, E1 and F1 categories of claims. The reports on category D claims (annexes II and IV) concern individual claims for damages above US$ 100,000; the report on E1 claims concerns oil sector claims; and the report on F1 claims (annex VI) concerns claims by Governments for losses related to departure and evacuation costs, and damage to physical property. The Governing Council approved the reports and recommendations concerning the claims in categories D and F1, and, after lengthy discussion, adjourned further consideration of the report on E1 claims until 30 June 2000. The Council reconvened on that date to continue its discussions and decided to postpone further consideration of the report until the thirty-seventh session, in September 2000, in an effort to reach a consensus on its decision. The attached tables (annex I) provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council.

The Governing Council also considered the report of the Executive Secretary: summary of activities, covering the period from 21 February to 10 May 2000. The report covers the appointment of Commissioners, processing of claims, requests for correction under article 41 of the Provisional Rules for Claims Procedure, the withdrawal of claims and the payment of approved claims.

The Governing Council considered the nomination of Michael Hwang, of Singapore, for appointment as a Commissioner, and approved his appointment to the Panel of Commissioners reviewing category E1 claims. That panel considers the oil sector claims filed with the Commission.

The Council discussed several issues relating to the processing and payment of claims, including the mechanism for the third phase of payment. The Council considered and adopted the draft decision concerning the priority of payment and payment mechanism for the third phase of payment, prepared by the drafting group that had been established to consider this matter (see annex X). The Council decided

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that successful claimants in categories D, E and F will receive an initial amount of US$ 5 million and subsequent payments of US$ 10 million, in the order in which the claims have been approved. Newly approved claims will have priority in initial payment over subsequent payments to previously approved claims. Successful environmental monitoring and assessment claims are also accorded priority of payment in the above-mentioned amounts. Payments will be made every four months, with the first payment under the third phase expected to be made in late 2000.

Finally, the Governing Council decided to hold its thirty-seventh session from 26 to 28 September 2000.

(Signed) Hans J. **Heinemann**
President of the Governing Council

Annex I

Summary of recommendations

1. Report and recommendations made by the panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US$100,000 (category "D" claims)

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Kuwait	199	-	73,437,225.43	57,659,045.08

2. Report and recommendations made by the panel of Commissioners concerning the fifth instalment of individual claims for damages above US$100,000 (category "D" claims)

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Algeria	1	-	99,695.50	20,010.22
Australia	1	-	243,321.59	100,613.39
Austria	1	-	193,658.40	31,340.52
Canada	10	1	1,287,398.01	311,443.54
France	1	1	270,791.51	11,015.57
Germany	4	1	593,911.80	288,807.51
Greece	1	-	145,340.00	20,000.00
India	179	30	38,145,753.53	5,101,591.40
Ireland	1	1	840,918.00	167,759.24
Italy	3	-	692,887.58	128,363.61
Jordan	38	1	10,767,960.07	1,626,531.98
Kuwait	121	2	42,210,244.61	31,838,923.83
Lebanon	3	-	798,692.03	273,550.63
Morocco	1	-	101,785.20	65,875.76
Pakistan	5	-	1,422,430.60	617,591.08
Philippines	1	-	110,847.00	39,020.02
Poland	1	-	48,961.00	19,134.95

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Sudan	13	-	1,927,272.21	367,002.85
Sweden	2	-	324,341.60	108,508.62
Syria	6	-	510,104.61	313,180.53
United Kingdom	33	6	13,112,235.51	2,007,252.42
United States	23	-	5,063,997.59	2,070,997.53
UNDP Kuwait	1	-	134,993.08	106,407.11
UNDP Washington	2	-	80,719.96	2,076.00
UNHCR Canada	1	-	533,000.00	95,433.57
UNRWA Gaza	3	-	308,715.39	133,491.58
Total	456	43	119,969,976.38	45,865,923.46

3. Report and recommendations made by the panel of Commissioners concerning the fourth instalment of "F1" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Canada	1	-	47,026,391	9,292,112
Germany	1	-	66,482,479	63,416
Netherlands	2	3	35,625,953	220,086
Pakistan	1	1	202,989,877	16,535,557
Philippines	1	-	42,124,039	7,567,327
Sri Lanka	1	-	3,014,280	2,959,696
Tunisia	-	1	1,200,000	Nil
Turkey	1	1	6,251,737	130,424
United Kingdom	1	-	6,117,084	499,935
United States	1	-	14,301,987	7,257,616
Total	10	6	425,133,827	44,526,169

Annex II

Report and recommendations made by the Panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US$ 100,000 (category D claims)*

* Previously issued as document S/AC.26/2000/11.

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Introduction

1. This is the eighth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part two of the fourth instalment, comprising 200 of the 1,050 category "D" claims in the fourth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 26 January 1999. 2/

2. Part two of the fourth instalment comprises 200 claims for real property losses ("D7 claims") only, submitted by the Government of Kuwait. There are approximately 2,800 D7 claims in category "D". Ninety-five per cent of the D7 claims were submitted by the Government of Kuwait. For that reason the Panel has developed a methodology to apply to the Kuwaiti D7 claims only. The remaining 5 per cent of the claims will be subject to a case by case review by the Panel, applying the general principles developed for the Kuwaiti claims, in so far as it is appropriate to do so.

3. The 200 claims were chosen as a representative sample of Kuwaiti D7 claims, and in view of the complex legal and valuation issues involved in resolving them, the Panel designated the 2 claims as "unusually large or complex" pursuant to article 38(d) of the Rules, and has reviewed them within a period of twelve months.

4. The Panel commenced its review of the fourth instalment on 26 January 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 25-26 January 1999, 22-24 March 1999, 26-27 April 1999, 24-26 May 1999, 18-21 July 1999, 6-8 September 1999, 15-17 November 1999, 20-21 December 1999 and 27-29 January 2000. Members of the Panel also visited Kuwait during 18-21 March 1999. During the visit, they met with a number of Kuwaiti Government officials and obtained information relevant to the resolution of category "D" claims.

I. BACKGROUND

A. Background information

5. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in part two of the fourth instalment is set out in detail in the Panel's First and Second Reports. 3/

6. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided

by the Executive Secretary pursuant to article 32 of the Rules, and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

7. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

8. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. D7 CLAIMS

A. Claim form requirements

9. The D7 page of the category "D" claim form provides for three types of real property losses, namely:

(a) Estimated cost of repair work not yet completed;

(b) Actual cost of repair work already completed; and

(c) Other (e.g., loss of rental income).

10. Claimants are required to identify the type of property, the name of the owner as it appears on the title deeds or other instruments of title, the date of purchase and the percentage of the claimant's ownership.

11. In addition, details of the property, including the address, official registration number, age of the structure, and floor space, must be provided. Claimants must also state the estimated value of the property as at 1 August 1990 and the original cost, including improvements.

12. The claim form requires claimants to attach documentary and other appropriate evidence such as proof of ownership, repair costs, copies of rental contracts and to include a sworn statement describing what happened

to the property. Where applicable, mortgage information and documentation should also be provided.

B. Description of D7 claims in part two of the fourth instalment

13. As stated above, the 200 D7 claims in part two of the fourth instalment were filed by the Government of Kuwait which, through its Public Authority for the Assessment of Compensation Resulting from Iraqi Aggression ("PAAC"), assisted claimants in the preparation of claims for all losses.

14. Pursuant to the widespread damage caused to real property in Kuwait as a result of Iraq's invasion and occupation, the claims cover losses in respect of eight types of real property identified to date from the claims reviewed: villas and houses; chalets and beach houses; apartment buildings; shops; offices; factories and warehouses; farm buildings; and garages.

15. Claims have been put forward in respect of physical damage based on estimated or actual cost of repairs. Some claimants had not undertaken repairs to their property at the time of filing their claims and submitted claims based on the estimated cost of undertaking the repairs. Most claimants had carried out the repairs and were able to claim the actual costs incurred.

16. Under the loss type "other", the majority of claimants have claimed for loss of rental income in respect of apartment buildings, which were vacated when tenants left Kuwait. In a number of cases, tenants simply failed to pay rent due to civil disorder. A small number of claims are for loss of anticipated rental income where claimants had either completed the construction of premises, which were not yet occupied, or for buildings that were due to be completed during the period of the occupation.

17. In addition, there are claims under the loss type "other" for contract interruption losses in relation to construction projects that were in progress and interrupted as a result of the invasion. These encompass claims for site restoration costs, stolen materials and equipment, and increased construction costs.

18. As with other loss types in category "D", some D7 claimants have submitted part of their losses for compensation in category "C" and are claiming the remainder in category "D". Other claimants have claimed all their losses in category "D".

19. Many of the properties were owned by more than one person. In that case, either the claimants are claiming solely for losses relating to their own share of the property or, in most cases, they are also claiming on behalf of the other joint owners who have authorised them to do so.

20. Many claimants are claiming for more than one property, and in each case have submitted a separate claim form for each property. Claimants are also claiming for different types of losses in respect of the same property, as in cases where an apartment building that was damaged was the subject of both a claim for estimated or actual cost of repairs and for loss of rental income.

21. Due to the period of time that has elapsed since claimants submitted their claims for estimated cost of repairs, the Panel considered it likely that many of the claimants would by now have completed the repairs, and would have proof of actual costs incurred. Members of the Panel who visited Kuwait found that generally most of the buildings had been restored. In the light of this fact, the Panel instructed the secretariat to write to all claimants who submitted claims for estimated cost of repairs requesting them to provide proof of actual costs incurred, or an explanation as to why the repairs had not been carried out after liberation.

22. Most of the D7 claims have been well substantiated in accordance with guidelines provided by PAAC, and generally have been presented in a systematic way. The majority of claimants have submitted a variety of documents in support of their claims. In addition to personal and witness statements describing what happened to their properties, claimants have submitted evidence of their ownership or leasehold interests in the form of title deeds, sales contracts, Housing Authority Distribution Forms, 6/ copies of loan contracts where claimants were the recipients of government land, 7/ irrevocable powers of attorney, 8/ and lease agreements.

23. During their visit to Kuwait, members of the Panel were informed of the comprehensive system at the Kuwaiti Ministry of Justice for the registration of various ownership interests. The Ministry is able to provide claimants with copies of documents on its files.

24. As the rebuilding work took place after Iraq's invasion and occupation of Kuwait, claimants were able to supply post-invasion documents evidencing their losses. In respect of claims for estimated or actual cost of repairs, claimants submitted estimates, bid proposals, invoices, and contracts in support of claims and loss adjuster's and civil engineer's reports assessing the damage and the reasonableness of the amounts claimed. In addition, some claimants submitted video tapes and photographs depicting the state in which they found their properties upon their return to Kuwait.

25. Claimants submitted rental contracts, rent receipts, and utility bills in support of claims for loss of rental income. Where a claim was made for a number of units in one or several buildings, claimants included rental summaries listing each property and submitted documents in respect of each unit contained in a building.

26. The Panel determined that a claim submitted by an individual in respect of real property owned by a charitable organization should be treated as one submitted by that organization. The claim was therefore transferred to the E4 Team, which is processing Kuwaiti claims submitted by corporations and other legal entities.

C. Procedural history

27. In developing the methodology for resolving D7 Kuwaiti claims, the Panel has applied many of the principles that it adopted for the resolution of D4(Personal Property) claims in its "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)". 9/

28. The D7 methodology comprises two parts. Part one is designed to assess the compensability of the claim and part two determines the amount of compensation to be recommended. The first part is the ownership, loss and causation test. If this is established, the second part is the compensation methodology that has four stages:

(a) adjustment;

(b) assessment;

(c) valuation; and

(d) calculation of the recommended amount.

29. The Panel was assisted by expert loss adjusting and accounting consultants in the development of the compensation methodology.

III. D7 METHODOLOGY

A. Ownership, loss and causation test

30. Under the ownership, loss and causation test the claimant is required to prove:

(a) that he or she had an ownership or other proprietary interest in the property that is the subject of the D7 claim;

(b) the loss and/or other damage that gave rise to the claim; and

(c) that such loss and/or damage occurred as a direct result of Iraq's invasion and occupation of Kuwait.

1. Ownership

31. During its mission to Kuwait, members of the Panel learned that the majority of Kuwaiti D7 claims are based on three different types of proprietary interests in real property. They are as follows:

(a) freehold ownership; 10/

(b) ownership interest resulting from the execution of an irrevocable power of attorney, which is a widely used method of transferring ownership in Kuwait; and

(c) leasehold interest in government owned land, upon which the tenant has built chalets, farms or other approved structures. 11/

32. To be eligible for compensation, the claimant must establish that he or she had a proprietary interest in the subject real property, as at 1 August 1990. While many claimants submitted documents that proved their ownership or leasehold interests at the time when they bought the property or first leased it, many did not have documents contemporaneous with Iraq's invasion of Kuwait. A system was therefore devised with PAAC whereby verification of freehold interests and interests under irrevocable powers of attorney could be undertaken through the Kuwaiti Ministry of Justice, and in respect of leasehold interests through the Kuwaiti Ministry of Finance. In the present instalment only in one case did the certification by the Ministry of Justice not support the claim.

33. With respect to the types of evidence deemed sufficient to establish an ownership or leasehold interest, the claimant must provide one or more of the following documents, depending upon the type of interest asserted:

(a) A certified copy of a title deed in respect of freehold ownership;

(b) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice in Kuwait which establishes the fact that the claimant was the owner of the property on or about 1 August 1990;

(c) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice which establishes that the claimant had de facto ownership of the property on or about 1 August 1990 arising from an irrevocable power of attorney executed in favour of the claimant; and

(d) A certified copy of a leasehold agreement between the claimant and the Ministry of Finance in Kuwait or a certificate issued by the Ministry of Finance, which establishes that the claimant was the leaseholder of the property on or about 1 August 1990.

34. The Panel notes that, depending upon the facts presented in a claim, there may be other types of evidence which may be deemed sufficient to establish the requisite proprietary interest in the subject property.

2. Loss and causation

35. The majority of claims arise out of situations where real property was damaged, or claimants could not recover rent. The Panel established separate criteria for loss and causation in respect of claims for estimated or actual cost of repairs, and claims for loss of rental income.

36. With respect to claims for estimated and actual repair costs, the Panel has determined that the fact of loss and direct causation will be considered to have been proved where the claimant provides a personal statement describing the circumstances and nature of the loss and referring to one or more of the circumstances enumerated in paragraph 6 of Governing Council decision 7, 12/ together with one or more of the following types of evidence:

(a) A witness statement that corroborates the claimant's description of the loss suffered;

(b) An invoice, bid/proposal, contract, loss adjuster's report or other similar type of document which refers to the damage for which compensation is being claimed; and

(c) A photograph or video tape showing the damage.

37. In respect of claims for loss of rental income, the claimant must provide a personal statement describing the circumstances and nature of the rental loss, together with one or more of the following documents:

(a) A witness statement that corroborates the loss of rental income claim; and

(b) A rental contract, rental receipt, utility bills or other similar evidence which establishes that the affected property comprised rental units on or about the date of the invasion.

38. The Panel notes that depending upon the facts presented in a claim, there may be other types of evidence that may be deemed sufficient to meet the fact of loss and causation requirement.

39. Once the requisite ownership, loss and causation criteria set by the Panel have been satisfied, the next stage is the application of the compensation methodology, which encompasses the verification and valuation of the claim based on evidence of the quantum of the loss suffered by the claimant.

B. Compensation methodology

40. Based on the number and types of D7 losses claimed, the Panel has categorized claims into the following four main loss elements for purposes of developing the compensation methodology, namely:

(a) Estimated cost of repair work that has not yet been completed ("Estimated cost of repairs");

(b) Actual cost of repair work that has already been completed ("Actual cost of repairs");

(c) Loss of rental income, including loss of anticipated rental income. These claims are assessed on a per unit basis; and

(d) Other.

41. A standard methodology has been developed for claims falling under each of the loss elements (a) to (c) above. Claims falling under item (d), "Other", are to be dealt with on a case by case basis, so far as possible adopting the methodological principles of loss elements (a) to (c) above.

42. As stated in paragraph 21 above, all claimants who have submitted claims for estimated cost of repairs are requested to submit evidence of actual costs incurred. The responses are assessed to ascertain whether the claimant has undertaken the repairs, and if not, the reasons therefor. Where the repairs have been carried out and the costs are equal to or less than the estimated cost of repairs, the claim will be valued using the compensation methodology for actual cost of repairs. Where the claimant has incurred costs higher than those originally estimated, the claim is valued using, in general, the compensation methodology for estimated cost of repairs.

43. The Panel has determined that a substantial discount should be applied in assessing the recommended compensation where claimants fail to respond to requests for proof of actual costs incurred, or provide unsatisfactory explanations.

44. Some claimants submitted evidence that they were unable to carry out repairs as the property was in an area that had not been cleared of land mines and there was a Government of Kuwait prohibition on rebuilding the property. In other cases the property had been sold. In such cases no discount was applied.

45. The compensation methodology comprises four stages:

(a) Adjustment process;

(b) Assessment process;

(c) Valuation process; and

(d) Calculation of the recommended compensation.

1. Adjustment process

46. The first stage in the methodology is to identify errors or omissions in the claim. The adjustment process is concerned only with the data presented in the claim. It ensures that the claimed amount is correctly supported by existing documentation. This analysis identifies adjustments to be made in the following circumstances:

(a) Classification errors where the claimant has incorrectly identified the category of the loss;

(b) Exchange rate variances where an incorrect exchange rate has been applied to an original claimed amount, denominated in currencies other than Kuwaiti dinars ("KD");

(c) Arithmetical errors;

(d) Reconciliation of amounts where amounts detailed in supporting documents differ from the amounts stated on the D7 page; and

(e) Duplicated claims where elements of the claim are duplicated within the D7 claim and/or between the D7 claim and other category "D" loss types and/or between the D7 claim and other claim categories.

47. The resulting figure is known as the "adjusted value". The review undertaken as part of the Adjustment process also allows the identification of missing or additional documentation that may affect the adjusted value during the next stage, which is the "assessment process".

2. Assessment process

48. The assessment process tests the existence and validity of all evidence provided in support of the claim. The Panel has developed specific assessment matrices for each loss element to ensure that all relevant aspects of the claim documentation are considered in the review process. The matrices cover the following loss elements:

(a) Estimated cost of repair;

(b) Actual cost of repair; and

(c) Loss of rental income, including loss of anticipated rental income.

49. Due to the fact that the "Other" loss element covers unspecified claims, no standard assessment matrix has been developed for that loss element. However, the assessment process for claims in the "Other" category reflects, as practically as possible, the assessment processes prescribed for the three specifically defined losses stated above.

50. In its review of the different types of losses, the Panel has determined that certain documents are essential to the analysis and assessment of the claim. The lack of such a document will lead to a deduction factor applied to the adjusted value. Deduction factors for the lack of such documents are all calculated on a pro rata basis depending on the proportion of the amount claimed for which there are no compulsory documents.

51. In addition to the above documents, the Panel has determined that there are other documents, which although not compulsory, serve to further substantiate the claim. The inclusion of these documents will result in an "add back" factor to the adjusted value in all types of claim except for loss of anticipated rent. Add backs can be calculated on either a pro rata or an absolute basis, as appropriate.

52. The total of all negative and positive adjustments gives rise to an assessment score. The assessment score is expressed as a percentage and is to be applied to the adjusted value.

3. Valuation process

53. The valuation process ensures a careful analysis and valuation of the adjusted claim, and allows the application of technical valuation principles to the adjusted value. In all cases, the Valuation score is expressed as a percentage, to be applied to the adjusted value. The steps applied at the valuation stage depend on the type of loss being claimed, as is next shown.

(a) Claims for estimated and actual cost of repair

54. Similar principles apply to the valuation process for both of these types of claim. The purpose of the process is to calculate a value for the claim that reflects the value of the property as at 1 August 1990.

55. In order to determine that value, the Panel was assisted by its expert consultants in the development of benchmark rebuilding costs in Kuwait as at 1 August 1990. The Panel established five benchmark categories representing the substructure, superstructure, internal finishes, fittings and services applicable to each of the eight types of real property as set out at paragraph 14 above. Using data on the cost of materials and labour as at 1 August 1990, and the benchmark categories, the Panel determined the typical rebuilding costs per square metre as at 1 August 1990 for each type of property.

56. As part of the valuation process, the Panel also set parameters for categorizing the nature of the repairs undertaken by the claimant, so as not to compensate for improvements to the property. The Panel established percentage criteria to be applied in determining whether the rebuilding work undertaken by the claimant should be classified as repairs, reconstruction or improvement. For each category of work, an appropriate depreciation factor is applied.

57. The depreciation factors are calculated by taking into account the age of the property as at 1 August 1990 and its estimated useful life. The useful life for each of the eight types of property was established in accordance with the state of the real property market in Kuwait as at 1 August 1990. The useful life of each property varies depending on the type of property. For example, the useful life for leased property is shorter than for property that is owner occupied.

58. In addition to setting benchmark criteria for typical rebuilding costs and depreciation factors, the Panel also determined inflation factors to be applied for purposes of adjusting the costs to reflect the impact of inflation between 1 August 1990 and the date on which the work was actually performed. In the case of estimated cost of repair claims, the date that the work was performed is deemed to be the date of the estimate or supplier/contractor contract.

59. The valuation process provides for a deduction to reflect any improvements to the property, where appropriate.

60. Taking into account the factors stated in paragraphs 54-58 above, the basic stages of the valuation process are as follows:

(a) Stage 1. The August 1990 benchmark rebuilding cost for the property is calculated by multiplying the floor area of the property in square metres by the standard benchmark rate for the type of property;

(b) Stage 2. The adjusted value of the claim is deflated to August 1990 prices by using an inflation rate based on the date of the estimate/payment;

(c) Stage 3. The status of the work carried out is established by dividing the adjusted deflated cost of repair by the benchmark rebuilding cost; and

(d) Stage 4. Where a claimant has not responded to a request for details of actual costs, or not provided satisfactory reasons, the adjusted claim is first deflated to August 1990 prices; it is then subjected to the depreciation factor based on the age of the property; and finally reduced by applying the discount factor to reflect the additional risk.

(b) Claims for loss of rental income and loss of anticipated rental income

61. Similar principles apply to the valuation process for claims for loss of rental income and loss of anticipated rental income. The purpose of the process is to consider the claim on a commercial basis, taking into account the period of the claim, the monthly rental amount and saved/discontinued expenses such as the cost of caretaking, air conditioning and sundry maintenance costs.

62. Saved/discontinued expenses are deducted from the claim. It is assumed that costs of air conditioning, caretaking services, elevator and sundry maintenance expenses would not have been levied or paid during the period for which compensation is being recommended. Where the claimant has not deducted these expenses from the claim, a fixed amount per month will be deducted depending on the number of units in the building.

63. The compensation period is limited to a maximum of 12 months unless the Panel determines that exceptional circumstances exist, for example in the case of large building projects.

64. For claims for loss of anticipated rental income, the date of completion of the building is also taken into consideration when calculating the period of the claim.

(c) "Other" losses

65. The valuation principles applied in such cases reflect the principles of the above specific loss types. Claims for loss of building materials are processed in the same way as claims for actual cost of repairs, but no depreciation is applied as the building materials are considered to have been new as at 1 August 1990.

66. With respect to claims for contract interruption losses, the Panel has had the advantage of examining the principles developed by the category "F3" Panel of Commissioners in its "Report and Recommendations Concerning the First Instalment of "F3" Claims". 13/ At paragraph 62 of that report, the "F3" Panel found that there was a general increase in the price of goods and services in Kuwait due to many factors, the precise effect of which it was impossible to identify. However, it found that price increases could be deemed to have been linked directly to Iraq's invasion and occupation of Kuwait in respect of the following costs:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 14/

67. Being in agreement with the above principles, the Panel therefore determines that claims for price increases relating to the above types of costs are compensable.

(d) Calculation of the recommended compensation

68. In calculating the recommended compensation, all of the steps stated above are followed to arrive at the recommended compensation, showing the adjusted value, the assessment and the valuation scores by loss element, and the final amount of recommended compensation for each D7 page.

IV. CROSS-CATEGORY ISSUES

69. As with D4(PP) claims, the Panel has identified D7 claims where claimants have claimed part of the claim for real property losses in category "C" and the remainder in category "D", which were defined as "spillover" claims in paragraph 53 of the Panel's Fourth Report. With respect to D7 claims, the Panel has identified spillover claims where claimants are seeking separate and distinct losses in category "D" and those where it is not possible to distinguish between what is being claimed in category "C" and what is claimed in category "D".

70. Where the D7 claim is separate and distinct from the C7 claim, the Panel values the D7 claim only. Where it is not possible to distinguish between what is claimed on the C7 page and the D7 page in respect of the same property, the combined C7 and D7 amounts will be subject to the D7 methodology. The assessment and valuation scores thus obtained will then be applied to the D7 claim only to obtain the recommended D7 compensation.

71. The Panel has also identified claims where claimants have duplicated C7 losses claimed in category "C" and D7 losses claimed in category "D". The D7 claim will be assessed to determine the extent to which it duplicates the C7 claim. Where the amount that is duplicated is less than US$100,000.00, the duplicated amount is to be deducted from the D7 claim during the adjustment process and the balance, if any, will be subject to the D7 methodology.

72. Where the amount that is duplicated is greater than US$100,000.00, the D7 methodology is to be applied to the whole of the D7 claim, including the duplicated amount, and the corresponding amount awarded in category "C" is then deducted from the recommended D7 award.

V. RECOMMENDATIONS

A. Recommended compensation

73. As stated previously above, all the 200 D7 claims covered by this report were submitted by the Government of Kuwait. Against the total amount claimed of US$73,437,225.43, the Panel has recommended compensation totalling US$57,659,045.08.

B. Interest and exchange rates

74. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of its First Report.

75. For purposes of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First Report.

C. Submission through the Executive Secretary to the Governing Council

76. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 29 January 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ The "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/21) was approved by the Governing Council in December 1999 pursuant to Governing Council Decision S/AC.26/Dec.81 (1999)

3/ See in particular chapter II of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report") and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ Housing Authority Distribution Forms provide details of a property conveyance by the Kuwaiti Housing Authority to a citizen of Kuwait.

7/ Loan contracts are issued by a bank in respect of interest-free loans to Kuwaiti citizens, who are recipients of government land, for the specific purpose of building a residence on that land.

8/ An irrevocable power of attorney permits the transfer of legal control of real estate, tantamount in many respects to a transfer of legal ownership, without a corresponding change in nominal title to the property. The effect of an irrevocable power of attorney is that, upon its execution, the ownership interest in the property described in the instrument is deemed to be immediately vested in the named beneficiary. Although the ownership rights resulting from the execution of an irrevocable power of attorney are not as unequivocal as a registered conveyance, it is nonetheless a widely accepted customary practice in Kuwait.

9/ S/AC.26/1998/15 ("Fourth Report").

10/ With respect to privately owned (freehold) real property, Kuwait's ownership verification process is based on a registration system. The Kuwaitis use the "Torrens" system, named after Richard Robert Torrens. This system is based on the use of a certificate of title, a document issued by an official of state or local government, which states the identity of the owner(s) of the title. All privately owned property is registered with the Real Estate Registration and Certification Department of the Ministry of Justice. Any transactions affecting the owner's interest in the property are required to be registered with the Department. To register a transaction, the applicant must pay registration fees which vary depending on the type of transaction to be registered (e.g 0.5 per cent of the contract price for registering a conveyance). Once registered, the Department, through its computer database and manual filing system, updates the ownership information in accordance with the registration made.

11/ By entering into a lease with the government, the tenant establishes the ownership of the structures erected on the leased land.

12/ S/AC.26/1991/7/Rev.1.

13/ S/AC.26/1999/24 (the "F3 Report")

14/ See para.62 of the F3 Report. The "F3" Panel determined that increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

Annex III

Decision concerning part two of the fourth instalment of individual claims for damages above US$ 100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 96th meeting, held on 15 June 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US$100,000 (category "D" claims), covering 200 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in paragraph 73 of the report, is as follows:

* Previously issued as document S/AC.26/Dec.96 (2000).

1/ The text of the report appears in document S/AC.26/2000/11 (annex II above). In conformity with the provisions on confidentiality in the Rules (article 30, paragraph 1, and article 40, paragraph 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to the Government of the State of Kuwait separately.

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Kuwait	199	-	73,437,225.43	57,659,045.08

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)),

4. Recalls that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for one claim referred to at paragraph 26 of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

Annex IV

Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of individual claims for damages above US$ 100,000 (category D claims)*

* Previously issued as document S/AC.26/2000/12

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Introduction

1. This is the ninth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of the fifth instalment, comprising 520 category "D" claims, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 20 July 1999.

2. The 520 claims contain loss types for which methodologies have already been developed ("application claims") 2/.

3. The Panel began its review of the fifth instalment on 20 July 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 18-21 July 1999, 6-8 September 1999, 15-17 November 1999, 20-21 December 1999 and 27-29 January 2000.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in the fifth instalment is set out in detail in its First and Second Reports. 3/

5. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules, and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules. In addition, the Panel has been assisted by expert consultants in the valuation of claims for D4 (personal property) losses.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations

in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN THE APPLICATION CLAIMS

8. Some of the application claims in this instalment raise new issues that were not dealt with in any of the Panel's previous reports. Wherever claims gave rise to new issues not considered in previous instalments, the Panel ensured that these were resolved so as to be consistent with established methodologies. These new issues and the Panel's determinations thereon are set out below.

A. Jurisdictional issues

9. The Panel considered a claim by an individual who was living in Saudi Arabia. He claimed personal property and income losses allegedly sustained as a result of his being deported together with his family from Saudi Arabia pursuant to a royal decree, on the grounds that he was suspected of collaborating with the Iraqis. The Panel determines that the claim is not compensable as the asserted losses did not occur as a direct result of Iraq's invasion and occupation of Kuwait.

B. D1(Money) issues: Claim for departure costs

10. The Panel considered a D1(money) claim for departure costs. The claim is for the costs of the claimant's airflight from Baghdad to Kuwait, incurred by the claimant in an effort to locate his luggage that did not arrive in Baghdad after his departure from Kuwait. The Panel determines that the claimant's flight to Kuwait to locate his lost luggage, and thereby mitigate his personal property loss, is compensable.

C. D1(Money) issues: Claim for relocation expenses

11. The Panel considered a D1(money) claim for relocation losses for a claimant and his family. The claim is for the costs incurred after departing Kuwait and relocating to Cyprus for one year before moving to Jordan. He claimed accomodation costs, comprising rent, electricity and water charges. The Panel determines that the claimant be awarded the maximum for relocation costs fixed by the Panel, being the equivalent of three months rental of the apartment and the water and electricity charges during that period. Rental expenses, water and electricity charges outside that period can not be considered relocation expenses of a temporary and extraordinary nature. 6/

12. The Panel considered a D1(money) claim for relocation costs for packing, shipping and customs duty expenses that the claimant incurred for the retrieval and delivery of his personal property in April 1993. The Panel determines that the claim is compensable as the claimant's retrieval of his personal property mitigated his personal property loss.

D. D1 MPA issues: Claim for illegal detention

13. The Panel considered a D1(MPA) claim for illegal detention. After the invasion, the claimant, a national from an OECD country, continued to work for his Iraqi employer as his employer advised him that it was less likely that he would be taken hostage if he was still working. The claimant considered this to be his illegal detention. The Panel determines that the claim for D1(MPA) is not compensable, as the claimant had agreed to continue working for his employer.

E. D3(death): Medical expenses, support and mental pain and anguish (MPA))

14. The Panel considered a D3(death) claim for medical expenses, support and mental pain and anguish for the birth of the claimant's stillborn child. The claimant alleged that the Iraqi staff running the Kuwaiti hospital where she gave birth to the child performed an unnecessary and unauthorized caesarean operation negligently which resulted in the child's death. A medical certificate from the hospital states that the child was stillborn. The Panel determines that the claimant had failed to establish a direct link between the stillborn birth of the child and the invasion and occupation of Kuwait and, as a consequence, the D3(death) claim for medical expenses is not compensable. The claimant was however compensated under D2(personal injury) for both MPA and her medical expenses for the serious personal injury she suffered due to the lack of post-operative care.

15. The Panel considered another D3(death) claim for support and MPA and a D2(personal injury) claim for medical expenses and MPA. The claimant, his parents and sisters were involved in a bus accident in Iraq while being evacuated from Kuwait. As a result of the accident, the claimant's parents died and the claimant's youngest sister sustained compound fractures to the left leg. The Panel, being in agreement with the principles set out in the Second "B" Report, determines that the death and personal injury claims are compensable. 7/ The Panel notes that the category "B" Panel of Commissioners took into consideration that many claimants involved in such accidents had no other choice but to try and reach their home by whatever means was available.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE FIFTH INSTALMENT

16. As was the case in part one of the fourth instalment, in the fifth instalment all the claims have been designated application claims. At each of its meetings in Geneva the Panel has therefore extensively reviewed individual claims, examined the application of the methodologies developed

by the Panel, and satisfied itself that the appropriate methodologies have been applied to the claims in the instalment.

17. Some claimants failed to submit any documentation in support of personal property losses, and have not responded to requests for additional information pursuant to article 34 of the Rules. Some claimants failed to prove their presence or residence in Iraq or Kuwait before or at the time of the invasion. The Panel determines that no compensation should be awarded for those claims. One claimant in the fifth instalment has withdrawn his claim.

18. The Panel deferred its consideration of a small number of claims because they contain loss types that cannot be resolved in the fifth instalment. These include claims for D8/9(business) losses for which a methodology is yet to be developed. In addition, the Panel has reviewed claims in this instalment with intangible property losses and has deferred them in order that further analysis can be undertaken and appropriate principles developed in considering such claims.

19. A number of claimants filed claims in category "D" specifically for interest on the value of their category "C" or "D" claims. In its First Report, the Panel recommended that interest be paid in accordance with Governing Council decision 16. 8/

20. The Panel has also considered a number of claims for claim preparation costs, including legal and loss adjusting fees. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claims for such costs.

IV. CROSS CATEGORY ISSUES

21. Recommended awards in respect of claims in this instalment are reported net of deductions of "A", "B" and "C" approved awards. 9/

V. RECOMMENDATIONS

A. Awards by submitting entity

22. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in the fifth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$119,969,976.38 the Panel has recommended compensation totalling US$45,865,923.46.

B. Interest and exchange rates

23. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of its First Report.

24. For purposes of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of its First Report.

25. In paragraph 39 of its Fifth Report, the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established that the application of the exchange rate approved by the Panel in its First Report would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the losses suffered. In particular, this would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different from the rate adopted by the Panel.

C. Corrections to previously reported claim awards

26. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel recommends approval of the corrected amounts as described in the following paragraphs. 10/ A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the submitting entities affected.

1. Part one of the first instalment correction

27. In respect of one D3(MPA) claim, a recommendation for an award was calculated on the basis that only the claimant was eligible for compensation. It has now been shown that the claim includes one other family member who is also eligible to receive a D3(MPA) award and the Panel

therefore recommends that an additional award be made. The concurrent recommended change to the submitting entity award is listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	1,059,075.26	1,062,425.26

2. Part one of the second instalment corrections

28. Four claims in part one of the second instalment require correction. In two of these claims, compensation was recommended for D1(MPA) on the basis that the claims were made only by the claimant who submitted the claim form. However, pursuant to a representation by the Government of Kuwait, made under article 41 of the Rules, the Panel recommends that awards should also be made for family members included in the claim. On the other hand, another claim submitted by the Government of Kuwait and approved in the same instalment was treated as a family claim for D3(death) losses, when in fact there was only one eligible claimant. This claim also requires correction.

29. The fourth claim to be corrected was submitted by the Government of India. In that claim, end of term indemnities were incorrectly deducted.

30. The concurrent recommended changes to the respective submitting entity awards are listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
India	393,986.27	400,041.27
Kuwait	1,728,458.48	1,697,556.67

3. Third instalment corrections

31. The Government of Kuwait, in its representation under article 41 referred to in paragraph 28 above, also identified two claims where family members were to be included in the individual's D1(MPA) claim. The Panel recommends this correction. The concurrent recommended change to the respective submitting entity award is listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	2,381,113.86	2,399,963.86

D. Submission through the Executive Secretary to the Governing Council

32. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 29 January 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment and relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 380 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/11) ("Third Report"), in paragraphs 41-115. Further, the Panel developed the methodology for D4(personal property) losses in part two of the second instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/15) ("Fourth Report"), in paragraphs 30-57.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [category D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(c) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See para.128 of the First Report.

7/ See paras 20-24 of the "Report and Recommendations made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Personal Injury or Death (Category "B" Claims)" (S/AC.26/1994/4).

8/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." See also paras. 64-65 of the First Report.

9/ See para. 21 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/21).

10/ Article 41 states that:

"1) Computational, clerical, typographical or other errors brought

to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council

2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction".

Annex

SUMMARY RECOMMENDATIONS OF THE FIFTH INSTALMENT OF CATEGORY "D" CLAIMS

Submitting entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Algeria	99,695.50	1	0	20,010.22
Australia	243,321.59	1	0	100,613.39
Austria	193,658.40	1	0	31,340.52
Canada	1,287,398.01	10	1 (1)	311,443.54
France	270,791.51	1	1	11,015.57
Germany	593,911.80	4	1	288,807.51
Greece	145,340.00	1	0	20,000.00
Iceland	-	0	(1)	-
India	38,145,753.53	179	30 b/ (5)	5,101,591.40
Ireland	840,918.00	1	1	167,759.24
Israel	-	0	(1)	-
Italy	692,887.58	3	0	128,363.61
Jordan	10,767,960.07	38	1 (1)	1,626,531.98
Kuwait	42,210,244.61	121	2 (5)	31,838,923.83
Lebanon	798,692.03	3	0	273,550.63
Morocco	101,785.20	1	0	65,875.76
Netherlands	-	0	(1)	-
Pakistan	1,422,430.60	5	(1)	617,591.08
Philippines	110,847.00	1	0	39,020.02
Poland	48,961.00	1	0	19,134.95
Sudan	1,927,272.21	13	(2)	367,002.85
Sweden	324,341.60	2	0	108,508.62
Syria	510,104.61	6	0	313,180.53
United Kingdom	13,112,235.51	33	6 (1)	2,007,252.42
United States of America	5,063,997.59	23	(2)	2,070,997.53

Submitting entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
UNDP Kuwait	134,993.08	1	0	106,407.11
UNDP Washington	80,719.96	2	0	2,076.00
UNHCR Canada	533,000.00	1	0	95,433.57
UNRWA Gaza	308,715.39	3	0	133,491.58
Total	119,969,976.38	456	43 (21)	45,865,923.46

a/ Numbers in parentheses represent claims that have been deferred for reasons set out in paragraph 18 of the report.

b/ Includes one withdrawn claim.

Annex V

Decision concerning the fifth instalment of individual claims for damages above US$ 100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 96th meeting, held on 15 June 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fifth instalment of individual claims for damages above US$100,000 (category "D" claims), covering 519 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, based on the recommendations contained in the annex to the report, are as follows:

* Previously issued as document S/AC.26/Dec.97 (2000).

1/ The text of the report appears in document S/AC.26/2000/12 (annex IV above). In conformity with the provisions on confidentiality in the Rules (article 30, paragraph 1, and article 40, paragraph 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government or international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Algeria	1	-	99,695.50	20,010.22
Australia	1	-	243,321.59	100,613.39
Austria	1	-	193,658.40	31,340.52
Canada	10	1	1,287,398.01	311,443.54
France	1	1	270,791.51	11,015.57
Germany	4	1	593,911.80	288,807.51
Greece	1	-	145,340.00	20,000.00
India	179	29	38,145,753.53	5,101,591.40
Ireland	1	1	840,918.00	167,759.24
Italy	3	-	692,887.58	128,363.61
Jordan	38	1	10,767,960.07	1,626,531.98
Kuwait	121	2	42,210,244.61	31,838,923.83
Lebanon	3	-	798,692.03	273,550.63
Morocco	1	-	101,785.20	65,875.76
Pakistan	5	-	1,422,430.60	617,591.08
Philippines	1	-	110,847.00	39,020.02
Poland	1	-	48,961.00	19,134.95
Sudan	13	-	1,927,272.21	367,002.85
Sweden	2	-	324,341.60	108,508.62
Syrian Arab Republic	6	-	510,104.61	313,180.53
United Kingdom	33	6	13,112,235.51	2,007,252.42
United States	23	-	5,063,997.59	2,070,997.53
UNDP Kuwait	1	-	134,993.08	106,407.11
UNDP Washington	2	-	80,719.96	2,076.00
UNHCR Canada	1	-	533,000.00	95,433.57
UNRWA Gaza	3	-	308,715.39	133,491.58
Total	456	42	119,969,976.38	45,865,923.46

3. Decides also, pursuant to article 41 of the Rules, to approve the amounts of the corrected awards for one claim in part one of the first instalment, four claims in part one of the second instalment, and two claims in the third instalment. The aggregate amounts of the corrected awards per country, based on the recommendations contained in paragraphs 27 to 31 of the report are as follows:

Part one of the first instalment correction

Country	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	1,059,075.26	1,062,425.26

Part one of the second instalment corrections

Country	Previous recommended award (US$)	Corrected recommended award (US$)
India	393,986.27	400,041.27
Kuwait	1,728,458.48	1,697,556.67

Third instalment corrections

Country	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	2,381,113.86	2,399,963.86

4. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)).

5. Recalls that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

6. Notes that no recommendations have been made at this stage for 21 claims referred to in paragraph 18 and in the annex of the report.

7. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government and international organization.

Annex VI

Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of F1 claims*

* Previously issued as document S/AC.26/2000/13.

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Introduction

1. This is the fifth report (the "Report") submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review category "F1" claims 2/ (the "Panel"). This Report concerns the fourth instalment of category "F1" claims.

2. The fourth instalment of category "F1" claims was submitted to the Panel in accordance with article 32 of the Rules on 18 February 1999. The instalment consists of 16 claims (the "Claims") filed by ten Governments (the "Claimants") seeking compensation in the total approximate amount of 425 million United States dollars ("US$"), 3/ including interest, as follows:

(a) Canada - Consolidated Claim (US$47,026,391);

(b) The Federal Republic of Germany - Ministry of Defence US$66,482,479);

(c) The Kingdom of the Netherlands - Ministry of Foreign Affairs (US$424,908); Ministry of Transport, Public Works and Water Management (US$411,957); Ministry of Finance (US$1,531,952); Ministry of Foreign Affairs, General Affairs Department (US$146,399) and Ministry of Defence (US$33,110,737);

(d) The Islamic Republic of Pakistan - Cabinet Division, Emergency Relief Cell (US$24,195,029) and Revenue Division (US$178,794,848);

(e) The Republic of the Philippines - Consolidated Claim (US$42,124,039);

(f) The Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka (US$3,014,280);

(g) The Republic of Tunisia - Tunisian Agency for Employment (US$1,200,000);

(h) The Republic of Turkey - Ministry of Communications, General Directorate of State Airports (US$296,829) and Ministry of Public Works and Settlement (US$5,954,908);

(i) The United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office (US$6,117,084); and

(j) The United States of America - Department of State (US$14,301,987).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in report nos. 21, 24, 25, 26 and 28, dated 8 October 1997, 8 July 1998, 13 October 1998, 11 January 1999 and 23 July 1999, respectively. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. In December 1998, after a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were issued to the Claimants requesting additional information and documents to assist the Panel in its review of the Claims.

5. Upon submission of the Claims to the Panel, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules, and that, accordingly, the Panel would complete its review of the Claims and submit its report and recommendations thereon to the Governing Council within twelve months of 18 February 1999.

6. The Panel considered that Iraq could provide information that would assist its review of the Claims of the Netherlands Ministry of Foreign Affairs and the Turkish Ministry of Communications, General Directorate of State Airports. Accordingly, copies of these Claims as filed by the respective Claimants were transmitted to Iraq and Iraq was invited to submit a response to the Claims, in accordance with article 36 of the Rules, within six months of 18 February 1999. Responses were received from Iraq in respect of both Claims within the stipulated time period.

7. On 12 May 1999, the secretariat wrote to the Permanent Mission of Pakistan to the United Nations Office at Geneva and provided the Pakistani Cabinet Division, Emergency Relief Cell notice of the Panel's intention to hold an on-site inspection of documents to verify the Claim. An inspection team composed of three members of the secretariat and two expert

consultants performed the on-site inspection in Pakistan from 6 to 8 September 1999.

8. In the course of the review of the Claims, the Panel noted that several Claimants sought compensation for costs incurred in evacuating individuals, for payments made to reimburse Government employees for loss of personal property and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claimants might be seeking compensation for losses that were the subject of category "C" or "D" claims. 4/

9. Accordingly, to avoid multiple recovery of compensation across categories, the Panel instructed the secretariat to carry out cross-category checks to ascertain whether there was any duplication of claims. The cross-category checks revealed that compensation was recommended in respect of three individual claimants in category "C" for the same losses that would otherwise have been compensable in this Report. Appropriate deductions have been made to avoid multiple recovery. 5/

10. The Panel has instructed the secretariat to carry out cross-category checks to ensure that compensation will not be recommended in respect of individual claimants in category "D" for the same losses for which compensation is awarded in this Report. The Panel has further instructed the secretariat to ensure that appropriate deductions will be made from the relevant category "D" claims to avoid multiple recovery.

11. In reviewing the Claims, the Panel held regular meetings at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. Expert consultants in accounting and loss adjusting were retained to assist the Panel in the verification and valuation of the Claims.

II. LEGAL FRAMEWORK

12. In its report on part one of the first instalment of category "F1" claims, the Panel discussed the legal framework within which the category "F1" claims would be decided by the Panel. 6/ The discussion covered the applicable law, the procedural requirements and evidentiary standards imposed on claimants, and the Panel's role in the proceedings. The Panel's

findings concerning the applicable law, procedural requirements and evidentiary standards set out therein are also applicable to the Claims.

III. VERIFICATION AND VALUATION

13. In applying the aforementioned procedural requirements and evidentiary standards to the Claims, the Panel undertook a careful examination of the statements of claim and evidence filed by the Claimants as well as the materials submitted by Claimants in their responses to the article 34 notifications. The Panel found that, within certain Claims, individual loss elements or portions thereof failed to meet the Commission's procedural requirements, evidentiary standards or the directness requirement as formulated in Security Council resolution 687 (1991). In such cases, the Panel found that compensation should not be awarded for those portions of the Claims.

14. With respect to the loss elements that the Panel considered compensable in principle, the Panel verified that the losses had, in fact, been incurred and then quantified such losses. In addition to verifying that the claimed losses had in fact been incurred, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in the case of claims for costs of evacuation on scheduled flights, the Panel only recommended compensation for one-way economy fares.

15. In many of the Claims, the documentary and other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of that loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel received advice from the expert consultants and considered the level and type of evidence that should reasonably be required of a Claimant given the circumstances prevailing at the time of the losses, particularly in Iraq and Kuwait. 7/

16. In reaching the recommended awards, the Panel adopted general principles of loss adjustment, such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property, the age and use of the property at the time the loss or damage occurred was taken into account and deductions were made where appropriate.

IV. COMMON ISSUES

17. As in previous instalments, the Claims give rise to a number of common legal issues. In addressing these common issues, the Panel has formulated and applied certain principles that are set out below.

A. Supplements or amended claims

18. The Governing Council has determined that, with the exception of environmental claims, after 1 January 1997 no category "F" claims will be accepted for filing under any circumstances and that after 11 May 1998, unsolicited supplements to previously filed claims in category "F" will not be admitted. 8/ In view of these determinations, the Panel finds that new claims submitted after 1 January 1997 - be they new categories of loss or additional loss elements - are not admissible as they are time barred. Further, information or documentation submitted in response to article 34 notifications, procedural orders or received by way of unsolicited supplements delivered to the Commission after 11 May 1998 cannot increase the amount claimed.

B. Military costs

19. The Panel notes that Governing Council decision 19 confirms that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". 9/ Accordingly, compensation will not be recommended for Claims, or portions thereof, that the Panel finds to constitute such military costs.

C. Relief contributions made by Governments

20. A number of the Claimants seek compensation for relief contributions made to international organizations and other entities. Pursuant to paragraph 36 of Governing Council decision 7, compensation is, in principle, available to reimburse payments made or relief provided by Governments to others for losses covered by any of the criteria adopted by the Governing Council.

21. As a general rule, the Panel considers that regular and non-specific relief contributions made by Governments are not compensable, as they do not satisfy the directness requirement. In contrast, the Panel considers that specific and non-regular relief contributions made by Governments do satisfy the directness requirement where the following conditions are met. First, the purpose of the contribution must be to respond to a state of

necessity in the form of a specific and urgent need that resulted directly from Iraq's invasion and occupation of Kuwait. Such a state of necessity might be evidenced, for example, by an appeal from an international organization for contributions for such a specific purpose. Second, the contribution must have been for losses that are covered by any of the criteria adopted by the Governing Council. Third, the contribution must have been actually used to respond to the specific and urgent need.

D. Claim preparation costs

22. The Panel notes that, in a letter dated 6 May 1998, it was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claims preparations costs at a future date. Accordingly, no action has been taken by the Panel in respect of the costs incurred in preparing the Claims.

E. Claims processing costs

23. The Panel notes that Governing Council decision 18 addresses, inter alia, the issue of claims processing costs. In particular, paragraph 1 provides that:

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of Governments. In the case of awards payable to claimants in categories 'A', 'B' and 'C', the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories 'D', 'E' and 'F', the fees should not exceed 3 per cent." 10/

24. When considering claims processing costs in earlier instalments, the Panel concluded that "it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditures" and, accordingly, awarded no compensation. 11/ That conclusion is also applicable to the Claims.

F. Currency exchange rates

25. As in the first four Reports, some of the Claimants have suffered losses or stated their claims in currencies other than United States dollars. Since the Commission issues awards in United States dollars, the Panel is required to determine and to apply the appropriate rates of exchange. Like other panels of Commissioners, the Panel has consistently

determined that the currency exchange rates as at the date of loss is the most appropriate method of calculating the applicable exchange rates. 12/

26. In its first four Reports, the Panel found that the losses had occurred fairly regularly throughout the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel thus adopted 16 November 1990, the midpoint of the occupation period, as the date of loss. 13/ Furthermore, the Panel also noted that special circumstances existed in relation to the exchange rate to be adopted for losses incurred in Kuwaiti dinars. Since the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that had prevailed immediately prior to the invasion. 14/

27. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred fairly regularly throughout the period of the occupation of Kuwait but that, in general, it is not possible to identify the precise date of their occurrence. Therefore, the Panel considers 16 November 1990, the midpoint of the occupation period, to be the most appropriate date for determining the applicable exchange rates in connection with the Claims. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for the Kuwaiti dinar.

28. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and as at 16 November 1990 for other currencies are the monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991. 15/

G. Interest

29. A number of the Claims include a claim for interest on the principal amount claimed. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards". 16/ Thus, the Panel needs only to set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should

be used for calculating interest. Accordingly, the Panel determines that the date from which interest should run is 16 November 1990.

H. Categorization

30. The standard claim form for category "F" claims contains the following loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other losses. 17/ In the first instance, Claimants classified their losses pursuant to these heads of loss. On a number of occasions, after reviewing the Claimants' contentions and supporting documents, the Panel has considered it more appropriate to review a particular loss under a different loss type. These losses are discussed below as reclassified.

V. THE CLAIMS

A. Canada - Consolidated Claim (UNCC Claim No. 5000098)

31. The Claim by the Government of Canada originally sought compensation for the costs incurred by six Government departments - the Department of External Affairs; Environment Canada; Transport Canada; Public Works and Government Services Canada; the Canadian International Development Agency; and the Department of National Defence - for a total of 55,658,656 Canadian dollars ("Can$"). However, this amount appears to be an arithmetical error on the face of the Statement of Claim, since the component items total Can$55,759,656. The claims of Environment Canada and Transport Canada appear to relate to environmental damage; these portions of the Claim have been severed and assigned to the category "F4" Panel, appointed to review environmental claims. 18/ The remaining portions of the Claim total Can$54,315,482. The claims of each department, as reclassified by the Panel, are addressed in turn.

1. Department of External Affairs

(a) Contract

(i) Facts and contentions

32. The Department of External Affairs seeks compensation in the total amount of Can$1,498,837 for contract losses.

33. The Department asserts that it reimbursed members of its diplomatic missions in Iraq and Kuwait for personal property that was damaged or that had to be left behind when its staff was evacuated from the region. The Department also asserts that it reimbursed members of its diplomatic missions in Iraq, Kuwait, Israel, Saudi Arabia, Syria, Jordan, Algeria, Morocco and Tunisia for expenses they incurred in respect of accommodation, food and travel related to their evacuation.

34. The reimbursements for personal property and the reimbursements for accommodation, food and travel expenses were each made pursuant to special regulations governing the diplomats' contracts of employment.

(ii) Analysis and valuation

35. With regard to the claim for personal property reimbursements, the Panel notes that in the Fourth Report, it considered similar claims for indemnification made in respect of personal property losses and found them to be compensable losses "to the extent that the reimbursements ... were made pursuant to special decrees or laws and regulations governing the employment contracts of members of the diplomatic service' provided they were adequately supported by documentary and other appropriate evidence." 19/ The Panel determines that the same approach is applicable here and that, to the extent they are supported by sufficient evidence, the personal property reimbursements in question are compensable, with appropriate adjustments for depreciation.

36. With regard to the claim for accommodation, food and travel expense reimbursements, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide sufficient evidence to support the claim. Accordingly, the Panel recommends no award of compensation in respect of the claim for these reimbursements.

(iii) Recommendation

37. The Panel recommends an award in the amount of Can$18,095 (US$15,532) for contract losses.

(b) Payment or relief to others

(i) Facts and contentions

38. The Claimant seeks Can$50,000 as compensation for financial assistance payments made to reimburse Canadian nationals for food, lodging

and travel expenses they incurred as a result of being unable to leave Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait.

39. The Claimant also seeks compensation for a payment allegedly made to the Canadian Red Cross Society in the amount of Can$50,000 for the establishment of a national information bureau in Canada.

(ii) Analysis and valuation

40. The Panel finds that the financial assistance payments were for temporary and extraordinary living expenses that are, in principle, compensable losses. However, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide details of the recipients of the financial assistance, nor evidence that the payments were in fact made. The Claimant has, therefore, failed to meet the evidentiary standards imposed on claimants, as set out in article 35 of the Rules. Consequently, this portion of the Claim is not compensable.

41. The Panel considers that the claim for a Can$50,000 payment to the Canadian Red Cross Society fails to meet the directness requirement as formulated in Security Council resolution 687 (1991). Furthermore, and in any event, the Panel notes that, despite a request in the article 34 notification, the Claimant failed to provide any documentation evidencing the payment to the Canadian Red Cross Society. Accordingly, this portion of the Claim is also not compensable. 20/

(iii) Recommendation

42. The Panel recommends no award of compensation for payment or relief to others.

(c) Evacuation costs

(i) Facts and contentions

43. The Claimant seeks Can$1,014,000 as compensation for costs incurred in chartering two aircraft to evacuate Canadian nationals from Iraq and Kuwait. The Claimant chartered a passenger aircraft from Nationair, a Canadian company, for the period from 11 August to 7 September 1990. During this period the Nationair aircraft remained in Cyprus awaiting the release of Canadian nationals who were being held hostage. The Claimant also chartered an aircraft from Iraqi Airways on 6 September 1990 to

transport Canadian nationals from Iraq to Ankara, Turkey where they boarded the Nationair aircraft.

(ii) Analysis and valuation

44. In the First and Third Reports, the Panel established a number of principles governing the compensability of claims for evacuation costs. 21/ The Panel determined, inter alia, that costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia 22/ to their home states during the period 2 August 1990 to 2 March 1991 are compensable to the extent they are supported by sufficient documentary and other appropriate evidence. The Panel also determined that compensation under this loss type should be awarded for costs incurred for necessities such as transport, accommodation, food and urgent medical treatment provided to evacuees. The Panel considers that the same principles are applicable to the Claims.

45. Applying these principles, the Panel finds that the cost of chartering the Iraqi Airways aircraft is compensable. 23/

46. With regard to the claim for the charter of the Nationair aircraft, the Panel determines that travel costs are only compensable to the extent they have been reasonably incurred. The Panel notes that, although the Claimant was requested to do so in the article 34 notification, it did not provide an explanation justifying the length of time that the Nationair aircraft remained on standby in Cyprus. In the absence of such an explanation, the Panel considers that keeping an aircraft on standby for nearly one month was not reasonable. It recommends that compensation be awarded for the cost of chartering the aircraft for three days, the time it would reasonably have taken it to fly from Canada to the Middle East, collect the released hostages and return to Canada.

(iii) Recommendation

47. The Panel recommends an award in the amount of Can$352,525 (US$302,597) for evacuation costs.

(d) Public service expenditures

(i) Facts and contentions

48. The Claimant seeks compensation in the total amount of Can$8,774,795 for the following public service expenditures.

49. Compensation totalling Can$2,084,000 is sought in respect of increased telecommunications costs incurred by the Claimant in the aftermath of Iraq's invasion of Kuwait. These costs include the purchase of satellite telecommunications units for Canadian Embassies in the Middle East; the cost of increased use of conventional and satellite telecommunications systems; the cost of emergency courier services to Canadian diplomatic missions in the Middle East, and staffing costs for additional telecommunications operators.

50. The Claimant asserts that, following Iraq's invasion and occupation of Kuwait and the closure of the Canadian Embassy in Kuwait, it established temporary diplomatic missions in Qatar and Bahrain and relocated the offices of the Canadian immigration programme from Kuwait to Jordan and Saudi Arabia. Compensation totalling Can$960,000 is claimed for the costs of these temporary missions and relocations.

51. Compensation is also sought for the costs incurred by the Department of External Affairs in establishing and operating a Gulf War Task Force in Ottawa and for the increased operating costs of Canadian diplomatic missions in the Middle East, Washington D.C. and London. The Claimant asserts that the Gulf War Task Force was established "to coordinate all of the crisis-related activities (evacuation, political, consular, commercial, sanctions, communications)". A total of Can$1,947,000 is sought.

52. The Claimant seeks Can$243,000 as compensation for the costs incurred by the Department of External Affairs in responding to questions from the media on the crisis; in preparing press releases; and in monitoring developments in the media.

53. The Claimant also seeks compensation for the travel costs of a Canadian consular official who accompanied Canadian Embassy staff in Iraq on their evacuation journey; for costs incurred in redeploying members of diplomatic missions; and for travel costs for department officials attending meetings in Paris, Washington D.C. and Rome on the "crisis in the Gulf". A total of Can$561,163 is claimed.

54. Compensation totalling Can$2,624,000 is sought for the costs incurred by the Department of External Affairs in increasing the security of Canadian diplomatic missions in the Middle East and elsewhere. The measures included the deployment of security guards to the Canadian missions in Amman, Bogota, Damascus, Riyadh, Tehran and Tunis; and the provision of armoured and four-wheel drive vehicles to the Canadian missions in Amman, Baghdad and Damascus.

55. Finally, the Claimant seeks Can$355,632 in respect of expenses it incurred in processing the claims of individuals and corporations for submission to the Commission.

(ii) Analysis and valuation

56. With regard to the claims for increased telecommunications costs; costs incurred in establishing and operating the Gulf War Task Force in Ottawa, increased operational costs of various diplomatic missions, media monitoring costs, travel costs of the consular official accompanying the Canadian evacuees, redeployment costs, and travel costs for department officials attending meetings on the crisis, the Panel notes that it has considered similar claims in previous Reports. For example, in the Third Report the Panel considered claims for "public service expenditures of a general nature, such as costs of official missions, costs of transfer of diplomats and salaries for additional staff and overtime payments made to members of ... diplomatic missions in the Middle East" 24/ and stated that:

> "[T]hese expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the functions of diplomatic missions they cannot ... be considered to be of the extraordinary nature that would warrant their compensabilty". 25/

57. The Panel further notes that in the Fourth Report it applied the same reasoning to claims for similar costs incurred by domestic Government departments. 26/ Accordingly, the Panel finds that the Claimant's costs referenced in the paragraph above are not compensable, since they do not constitute public service expenditures of an extraordinary nature.

58. With regard to the claim for the costs incurred in establishing temporary diplomatic missions in Qatar and Bahrain and relocating the offices of the Canadian immigration programme from Kuwait to Jordan and Saudi Arabia, the Panel notes that in the First Report it considered similar claims for the costs incurred by a State in establishing and operating a temporary embassy in Abu Dhabi following the closure of its Embassy in Kuwait City. There the Panel found that "even if [that State] would not otherwise have opened an Embassy in Abu Dhabi, its voluntary and independent decision to operate a diplomatic mission there during the period of the occupation of Kuwait has not resulted in a direct loss within the meaning of paragraph 16 of [Security Council] resolution 687 (1991)". 27/ The Panel considers that the same principles are applicable here and, accordingly, recommends no compensation for the costs incurred in

establishing temporary diplomatic missions and relocating the offices of the immigration programme.

59. With regard to the claim for costs incurred in increasing the security at Canadian diplomatic missions, the Panel considers that such costs are compensable only if they were incurred as a direct result of Iraq's invasion and occupation of Kuwait and were reasonable in the prevailing circumstances. In this regard, the Panel notes that in the Third Report, it considered the compensability of costs incurred by Governments in taking safety measures for the protection of individuals and property and determined that such costs are compensable "provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed". 28/ In the Fourth Report the Panel set down additional guidelines as to what constitutes a "reasonable" protective measure. It determined, inter alia, that only protective measures taken within a specific geographic area are compensable. It held that "[f]or the same reasons that the Panel limited the compensability of evacuation costs to those costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia only, ... it also limits the compensability of costs incurred in taking protective measures to those taken in respect of individuals and property in the same four States." 29/

60. The Panel considers that these same guidelines are applicable here. The Panel finds, however, that the Claimant has failed to provide sufficient information and evidence for it to ascertain whether the increased security measures were incurred as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, these costs are not compensable.

61. With regard to claims processing costs, for the reasons given in section IV.E above, the Panel finds that such costs are not compensable.

(iii) Recommendation

62. The Panel recommends no award of compensation for public service expenditures.

2. Public Works and Government Services Canada

(a) Public service expenditures

(i) Facts and contentions

63. According to the Claimant, Public Works and Government Services Canada is the Government department responsible for the management of Government property. Its responsibilities include the development and updating of "readiness plans" and crisis management procedures for wartime and other emergencies, as well as the organization and coordination of security measures for all Government buildings in Canada.

64. Compensation in the total amount of Can$1,092,500 is sought for various increased security measures taken in Canada, such as the provision of additional security guards to Government buildings.

(ii) Analysis and valuation

65. The Panel considers that the principles and guidelines set out in paragraph 59 above are applicable to the claim of Public Works and Government Services Canada.

66. Since the expenses for which compensation is claimed were incurred in providing additional protection for properties located in Canada, the Panel finds that they are not compensable.

(iii) Recommendation

67. The Panel recommends no award of compensation for public service expenditures.

3. Canadian International Development Agency

(a) Payment or relief to others

(i) Facts and contentions

68. The Claimant asserts that one of the functions of the Canadian International Development Agency is the provision of "financial support for efforts to alleviate human suffering caused by natural and made-man disasters." The support is normally channelled through international and non-governmental organizations. Compensation is sought for 39 relief

contributions that were made by the Government of Canada to a number of international organizations and other entities during and after the period of Iraq's invasion and occupation of Kuwait, and which were additional to the regular payments and contributions made by the Government of Canada to these organizations. In general, the contributions were used to provide assistance to: (1) non-Iraqi persons who left Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait; (2) Iraqi Kurds and other Iraqi refugees who left Iraq after the period of Iraq's invasion and occupation of Kuwait; (3) hospitals providing medical services in Israel during the period of Iraq's invasion and occupation of Kuwait; and (4) other persons who were in Iraq or Kuwait during and/or after the period of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation totalling Can$33,142,350 in respect of these contributions.

(ii) Analysis and valuation

69. The Panel finds that a number of the relief contributions made by the Government of Canada do not satisfy the requirements set forth in section IV.C above, since they were not used to respond to a specific and urgent need for losses directly resulting from Iraq's invasion and occupation of Kuwait.

70. The Panel notes that in the First Report it considered the issue of whether losses occurring outside the period of Iraq's invasion and occupation of Kuwait (i.e., 2 August 1990 to 2 March 1991) are compensable. It found, in accordance with the findings of the category "C" Panel, that the occurrence of losses outside this period imposes an extra burden on a claimant to provide an explanation as to why such loss should be considered a direct result of Iraq's invasion and occupation of Kuwait. 30/ In the Fourth Report the Panel determined that, in the absence of such an explanation, losses will only be compensable if they relate to a reasonable period immediately after the liberation of Kuwait. 31/ In the circumstances of the claims under consideration in the Fourth Report, the Panel found 1 May 1991 to be a reasonable cut-off date for compensation. 32/ The Panel considers that, in the absence of an adequate explanation, 1 May 1991 is also a reasonable cut-off date for the relief contributions claimed by the Government of Canada. As a result, the Panel finds that the relief contributions provided by the Government of Canada in respect of the period after 1 May 1991 are not compensable.

71. Further, the Panel finds that the exodus of Kurdish and other Iraqi refugees after 2 March 1991 towards and across international frontiers was not a direct result of Iraq's invasion and occupation of Kuwait.

Accordingly, the Panel finds that the relief contributions made by the Government of Canada to assist such refugees are not in principle compensable.

72. The Panel recognizes that the Governing Council in decision 7, paragraph 11, stated that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". 33/ The Panel therefore considers that compensation are not be awarded to a Government to reimburse contributions made to persons who would not be eligible to seek compensation from the Commission in their own capacity. Accordingly, the Panel finds that relief contributions made by the Government of Canada to assist Iraqi nationals who do not have bona fide nationality of any other State are not compensable.

73. In sum, the Panel considers that the relief contributions made by the Government of Canada that are not otherwise excluded by the findings in paragraphs 70-72 above, are compensable to the extent they are supported by sufficient documentary and other appropriate evidence.

(iii) Recommendation

74. The Panel recommends an award in the amount of Can$10,311,450 (USD$8,851,030) for payment or relief to others.

4. Department of National Defence

(a) Payment or relief to others

(i) Facts and contentions

75. The Department of National Defence seeks compensation totalling Can$1,482,773 in respect of 307 gas masks supplied to Canadian nationals in the Middle East and 10,000 gas masks provided to the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") in February 1991 for distribution to Palestinian refugees in the Occupied Territories.

(ii) Analysis and valuation

76. With regard to the claim for gas masks supplied to Canadian nationals in the Middle East, the Panel recalls the geographic limits on the compensability of protective measures set out in paragraph 59 above. In addition, the Panel notes that despite a request in the article 34

notification to provide details of the location of the Canadian nationals in the Middle East, the Claimant has not done so. In the absence of this information the Panel cannot determine whether the gas masks were supplied to individuals within Iraq, Kuwait, Saudi Arabia or Israel, and therefore cannot recommend any compensation.

77. With regard to the claim for gas masks provided to Palestinian refugees in the Occupied Territories, the Panel finds that the requirements set forth in section IV.C above, regarding the compensability of relief contributions made by Governments, are satisfied. As a result, the Panel determines that this claim is compensable to the extent that it is supported by sufficient documentary and other appropriate evidence.

(iii) Recommendation

78. The Panel recommends an award in the amount of Can$143,240 (US$122,953) for payment or relief to others.

(b) Public service expenditures

(i) Facts and contentions

79. The Claimant seeks Can$6,405,000 as reimbursement for war risk re-insurance and war catastrophe re-insurance premiums. The Claimant asserts that it purchased a twelve-month war risk re-insurance policy, beginning on 15 January 1991, for members of the Canadian armed forces, covering accidental death in respect of war risk while on service in the Middle East. The Claimant asserts that, following Iraq's invasion of Kuwait, its war catastrophe re-insurers demanded an additional premium for war risk exposure "as a direct result of [Canada's] involvement in the Gulf War".

80. The Claimant further asserts that in the wake of Iraq's invasion and occupation of Kuwait and the deployment of Canadian forces to the Persian Gulf, it transferred 70 military medical personnel from military hospitals in Canada to the Middle East and had to employ civilian back-up employees to maintain essential health-care services in Canada. Compensation totalling Can$229,945 is sought for the costs incurred in replacing the military medical personnel.

81. Finally, the Claimant seeks Can$575,282 for the costs incurred in implementing additional security measures at all Department of National Defence headquarters buildings in Ottawa during the period from 2 August 1990 to 2 March 1991.

(ii) Analysis and valuation

82. With regard to the claim for the additional insurance premiums, the Panel notes that the costs relate directly to Canada's participation as a member of the Allied Coalition Forces. The Panel therefore finds that the claimed costs constitute military costs that, for the reasons set out in section IV.B above, are not compensable.

83. The Panel notes that although the military medical personnel replacement costs relate to salaries paid to the replacement civilian medical employees, the need to employ them arose as a direct result of the transfer of military medical personnel to the Middle East to assist in the military hospitals. The Panel finds that these costs also relate to Canada's participation as a member of the Allied Coalition Forces. Accordingly, they constitute military costs that, for the reasons set out in section IV.B above, are not compensable.

84. With regard to the claim for the costs of implementing additional security measures, the Panel finds that, as the security measures were taken solely in Canada, for the reasons set out in paragraph 59 above, they are not compensable.

(iii) Recommendation

85. The Panel recommends no award of compensation for public service expenditures.

5. Recommendation for Canada

86. Based on its findings regarding the Claim of Canada, the Panel recommends compensation in the amount of US$9,292,112.

Table 1. Recommended compensation for Canada

Claim element	Claim amount (original currency) (CAN$)	Claim amount (US$)	Recommended compensation (US$)
1. Department of External Affairs:			
Contract	1,498,837	1,297,694	15,532
Payment or relief to others	100,000	86,580	nil
Evacuation costs	1,014,000	877,922	302,597
Public service expenditures	8,774,795	7,597,225	nil

Claim element	Claim amount (original currency) (CAN$)	Claim amount (US$)	Recommended compensation (US$)
2. Public Works and Government Services Canada:			
Public service expenditures	1,092,500	945,888	nil
3. Canadian International Development Agency:			
Payment or relief to others	33,142,350	28,694,675	8,851,030
4. Department of National Defence:			
Payment or relief to others	1,482,773	1,283,786	122,953
Public service expenditures	7,210,227	6,242,621	nil
Total	54,315,482	47,026,391	9,292,112

B. Federal Republic of Germany - Ministry of Defence (UNCC Claim No. 5000277)

87. The Claim by the Ministry of Defence originally sought compensation for three loss types, as reclassified by the Panel - contract, payment or relief to others and environmental damage and environmental damage - in the total amount of 136,480,304 deutsche mark ("DM"). The portion of the Claim relating to environmental damage has been severed and assigned to the category "F4" Panel appointed to review environmental claims. 34/ The remaining portions of the Claim totalled DM 103,854,304. However, in its response to the article 34 notification, the Claimant reduced its Claim to DM 103,845,632.

1. Contract

(a) Facts and contentions

88. The Ministry of Defence originally sought compensation in the amount of DM 199,554 for reimbursements that it made to three members of the German armed forces for household equipment losses in Iraq. The payments were made pursuant to special regulations governing the employment contracts of members of the armed forces.

89. In its response to the article 34 notification, the Claimant made adjustments reflecting the actual amounts reimbursed to the three servicemen. These adjustments reduced the total amount claimed to DM 190,882.

(b) Analysis and valuation

90. The Panel considers that, for the reasons given in paragraph 35 above, the claim for reimbursements made by the Claimant to three members

of the German armed forces for household equipment they lost in Iraq is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

91. The Panel recommends an award in the amount of DM 95,441 (US$63,416) for contract losses.

2. Payment or relief to others

(a) Facts and contentions

92. The Claimant seeks DM 103,654,750 as compensation for costs incurred in providing assistance to Kurdish refugees in Iran and Turkey. The Claimant explains that "[c]omponents of army battalions ... and of an air force squadron ... were deployed in Iran [from] 2nd May to 22nd June 1991". The costs for which compensation is claimed relate to, inter alia, petrol and oil, the rental of telecommunication equipment, the operation of a field hospital and the purchase of medical equipment, and the cost of chartering and maintaining aircraft.

(b) Analysis and valuation

93. The evidence submitted in support of this portion of the Claim indicates that the assistance was provided pursuant to decisions of the Government of the Federal Republic of Germany taken on 17 and 24 April 1991. The dates on which the assistance programme was launched and its focus leads the Panel to conclude that the relief was provided pursuant to Security Council resolution 688 (1991) of 5 April 1991. 35/

94. The Panel therefore finds that, for the reasons set forth in paragraph 71 above, the costs of the assistance provided to Kurdish refugees who left Iraq after 2 March 1991 cannot be considered as losses directly resulting from Iraq's invasion and occupation of Kuwait.

(c) Recommendation

95. The Panel recommends no award of compensation for payment or relief to others.

3. Recommendation for the Federal Republic of Germany

96. Based on its findings regarding the Claim of the Federal Republic of Germany, the Panel recommends compensation in the amount of US$63,416.

Table 2. Recommended compensation for the Federal Republic of Germany

Claim element	Claim amount (original currency) (DM)	Claim amount (US$)	Recommended compensation (US$)
Contract	190,882	122,204	63,416
Payment or relief to others	103,654,750	66,360,275	nil
Total	103,845,632	66,482,479	63,416

C. Kingdom of the Netherlands

1. Ministry of Foreign Affairs (UNCC Claim No. 5000005)

97. The Ministry of Foreign Affairs originally sought compensation for four loss types - contract, real property, other tangible property and environmental damage - for a total of 4,251,996 Netherlands guilders ("NLG"). The environmental damage portion of the Claim has been severed and assigned to the category "F4" Panel appointed to review environmental claims. 36/ The remaining portions of the Claim totalled NLG 751,996. However, in its response dated 26 March 1999 to the article 34 notification, the Ministry of Foreign Affairs reduced its Claim to NLG 748,263.

98. In its response to the article 34 notification, the Ministry of Foreign Affairs also attempted to introduce a new claim, for which it had not hitherto sought compensation: NLG 178,531 in relation to "running costs" of the Embassy of the Netherlands in Baghdad. The costs, consisting principally of fuel, taxi fares, local salaries, supplies and repairs, were allegedly incurred by the acting caretaker of the Embassy after the departure of the diplomatic staff.

99. The Panel finds that in accordance with the principles set out in section IV.A above, the Claimant's introduction of this new claim in its response to the article 34 notification is not admissible.

(a) Contract

(i) Facts and contentions

100. Compensation in the amount of NLG 428,384 was originally sought for rent paid in advance on the Netherlands' Embassies and staff residences in Kuwait and Iraq that remained vacant during the seven-month period of Iraq's occupation of Kuwait. This figure was reduced to NLG 424,650 in the response to the article 34 notification.

(ii) Analysis and valuation

101. In the First Report, the Panel found that "the mere permanent or temporary closure of a diplomatic mission, even in times of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event, ... the Claimant would have incurred the rental expense regardless of whether Iraq invaded and occupied Kuwait." 37/ Similarly, in the Third Report, the Panel found that "rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings". 38/ The Panel finds that the same approach should be adopted here, with the result that the pre-paid rent is not compensable.

(iii) Recommendation

102. The Panel recommends no award of compensation for contract losses.

(b) Real property

(i) Facts and contentions

103. The Claimant seeks compensation in the amount of NLG 4,564 for the costs it incurred in restoring the garden of the Embassy of the Netherlands in Kuwait. It is asserted that during the period of the occupation "the garden of the official residence was completely neglected. As a result, all the plants have withered."

(ii) Analysis and valuation

104. In the first four Reports, the Panel addressed the compensability of claims for repairs to Embassy premises damaged in Kuwait and Iraq during the period 2 August 1990 until 2 March 1991. 39/ The Panel concluded that such costs can be considered as arising directly from Iraq's invasion and occupation of Kuwait. That reasoning is applicable here. As such, the

claimed costs are compensable to the extent they are reasonable and supported by sufficient documentary and other appropriate evidence.

105. The Panel has reviewed the evidence submitted and finds that the costs of restoring the garden of the Embassy in Kuwait are reasonable and are supported by sufficient evidence. 40/

(iii) Recommendation

106. The Panel recommends an award in the amount of NLG 4,112 (US$2,422) for real property losses.

(c) Other tangible property

(i) Facts and contentions

107. The Claimant seeks compensation for loss or damage to tangible property belonging to the Government of the Netherlands that had been supplied to the residences of staff of the diplomatic missions in Kuwait and Iraq. The original submission sought NLG 99,160 and NLG 160,000 for the losses in Kuwait and Iraq, respectively. In its response to the article 34 notification, the Ministry of Foreign Affairs attempted to increase these amounts to NLG 112,795 and NLG 235,313, respectively.

108. Further, the Claimant seeks NLG 59,889 as compensation for the replacement value of communications equipment disabled by its staff for security reasons prior to the closure of its missions in Kuwait and Iraq, and for the value of computer equipment lost or stolen from its Baghdad Chancery.

(ii) Analysis and valuation

109. The Panel notes that, on the basis of the principles set out in section IV.A above, the Ministry of Foreign Affairs' attempted increases of the claimed amounts in its response to the article 34 notification are not admissible.

110. In the First Report, the Panel determined that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait are compensable if they are supported by sufficient documentary and other appropriate evidence. 41/ In applying those reasons here, the Panel finds that, given the fact that the Claimant's diplomatic staff were unable to protect the Claimant's tangible property in Iraq and Kuwait from damage or capture

during the period of Iraq's invasion and occupation of Kuwait, the causal link between the Claimant's tangible property losses and Iraq's invasion and occupation of Kuwait has been established. Accordingly, the Panel finds that the other tangible property claim of the Ministry of Foreign Affairs is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

111. The evidence submitted in support of this portion of the Claim indicates that losses were suffered. Accordingly, the Panel finds that, to the extent the losses are supported by sufficient evidence, they are compensable, adjustment being made for depreciation.

(iii) Recommendation

112. The Panel recommends an award of NLG 143,571 (USD$84,553) in respect of other tangible property losses.

2. Ministry of Transport, Public Works and Water Management (UNCC Claim No. 5000007)

(a) Contract

(i) Facts and contentions

113. Compensation totalling NLG 725,457 is sought by the Ministry of Transport, Public Works and Water Management for payments made under eight contracts entered into with private contractors for certain civil engineering projects in the Netherlands. Some of these contracts included a "risk" clause under which the Claimant agreed to bear any additional costs of performance of the contract caused by the cost of construction materials and fuels rising above a stipulated price. The Claimant asserts that, as a result of Iraq's invasion and occupation of Kuwait, the world-wide prices of mineral oil and bitumen increased and reached the ceilings set in the contracts. Accordingly, it was obligated to reimburse the contractors for the additional costs of carrying out the work under the contracts.

(ii) Analysis and valuation

114. Despite a request in the article 34 notification, the Claimant did not provide information on a number of issues relevant to the Claim. These include, for example, details of the Uniform Administrative Conditions which governed the contracts, information regarding the prices of fuel before and after Iraq's invasion and occupation of Kuwait, and a

description of the efforts made to seek alternative sources of fuel to reduce the amounts due under the contracts. The Panel, therefore, is unable to determine whether the losses for which compensation is claimed were a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this Claim is not compensable.

(iii) Recommendation

115. The Panel recommends no award of compensation for contract losses.

3. Ministry of Finance (UNCC Claim No. 5000056)

(a) Public service expenditures

(i) Facts and contentions

116. The Ministry of Finance originally sought NLG 3,453,791 as compensation for the costs incurred in seizing and safekeeping the cargo of a ship that was unable to reach its destination in Iraq following the invasion of Kuwait. In a communication dated 22 April 1996 the Claimant reduced the claimed amount to NLG 2,697,768.

117. The Claimant asserts that the ship, on a time charter for an Iraqi charterer, left Europe at the end of July 1990 with a cargo of cement and other building materials, the bulk of which was to be off-loaded in Iraq. Following Iraq's invasion and occupation of Kuwait, the shipping company declared the charter contract terminated because of the risk of it becoming illegal in view of the sanctions imposed by the Security Council. In September 1990 the vessel returned to a port in the Netherlands where it berthed and where customs formalities were commenced.

118. The Claimant further asserts that the cargo was considered goods in transit and, as such, was subject to the 1990 Iraq-Kuwait Import and Export regulations. As the cargo's destination was Iraq, the authorities considered that there existed a risk that allowing the ship to continue on its journey would violate Netherlands legislation (the "Sanction Law") implementing the trade embargo against Iraq. 42/ In September 1990, the ship and its cargo were seized and transferred to the Inspector of State Property in accordance with applicable legislation of the Netherlands. According to the Claimant, the seizing state is responsible for the cost of seizing and safeguarding the goods and that it bore these costs from the date of seizure until the cargo was deemed to be the responsibility of the master of the ship.

(ii) Analysis and valuation

119. In the Panel's view, the crucial fact in the sequence of events giving rise to the Claim is the seizure of the ship and its cargo by the Netherlands authorities, pursuant to Netherlands law giving effect to the United Nations trade embargo.

120. The Panel notes that paragraph 6 of Governing Council decision 9 provides, in part, that "[t]he trade embargo and related measures, and the economic situation caused thereby, will not be accepted as the basis for compensation." 43/

121. Governing Council decision 15 provides additional guidance as to the compensability of losses related to the trade embargo. 44/ Paragraph 3 reiterates the limitation on compensability set out in paragraph 6 of Governing Council decision 9 in the following terms: "Although the UN trade embargo was imposed in response to Iraq's invasion and occupation of Kuwait, losses suffered solely as a result of that embargo are not considered eligible for compensation because the causal link between the invasion and the loss is not sufficiently direct."

122. Paragraph 9 of Governing Council decision 15 provides guidance on the meaning of the statement in paragraph 6 of Governing Council decision 9 quoted in paragraph 120 above. Subparagraph (i) of paragraph 9 of Governing Council decision 15 provides, in part, that:

> "[t]he practical effect of this statement is that any loss, damage, or injury resulting solely from the trade embargo and related measures, and the economic situation caused thereby, is not eligible for compensation. The trade embargo and related measures are the prohibitions in United Nations Security Council resolution 661 (1990) and relevant subsequent resolutions and the measures taken by states in anticipation thereof and pursuant thereto, such as the freezing of assets by Governments."

123. The Panel considers that the Sanction Law constitutes "measure[s] ... taken by [a] state(s) ... pursuant [to United Nations Security Council resolution 661 (1990)]" within the meaning of subparagraph (i) of paragraph 9 of Governing Council decision 15. Accordingly, the Panel finds that any costs incurred by the Claimant as a result of the application of this decision are embargo-related costs and are not compensable.

(iii) Recommendation

124. The Panel recommends no award of compensation for public service expenditures.

4. Ministry of Foreign Affairs, General Affairs Department (UNCC Claim No. 5000057)

(a) Public service expenditures

(i) Facts and contentions

125. The Ministry of Foreign Affairs, General Affairs Department seeks NLG 257,809 as compensation for costs incurred in processing the claims of individuals and corporations for submission before the Commission.

(ii) Analysis and valuation

126. For the reasons given in section IV.E above, the Panel finds that claims processing costs are not compensable.

(iii) Recommendation

127. The Panel recommends no award of compensation for public service expenditures.

5. Ministry of Defence (UNCC Claim No. 5000058)

(a) Public service expenditures

(i) Facts and contentions

128. The Ministry of Defence seeks NLG 58,308,007 as compensation for "the (non-military) activities of the Netherlands Ministry of Defence during the UN-operations 'Desert Shield' and 'Desert Storm'". Asserted expenses include food supplies sent to Jordan; nuclear, biological and chemical ("NBC") protection equipment and medical equipment sent to Turkey; transport of equipment and personnel; purchase of medical articles; and additional Suez Canal transit costs.

129. The article 34 notification requested the Claimant to provide a detailed explanation of the nature of the operations and costs in question. The Ministry of Defence's response explains, inter alia, that the food

supplies were transported to Jordan on 3 September 1990 and were "distributed to the Jordan population through the Jordan Government"; that the NBC protection equipment and medical equipment were "donated by the Netherlands Government to the Kurd refugees"; that the transport of equipment "concerned specific military equipment that was needed by the personnel in the mission area"; that the medical articles were purchased "for the personnel of the Dutch Defence Organization who participated in the UN-operations 'Desert Shield' and 'Desert Storm'"; and that the additional Suez Canal transit costs "relate to the passage or transit of the Dutch Navy ships".

(ii) Analysis and valuation

130. With regard to the portion of the Claim relating to food provided to the Government of Jordan for distribution, the Panel finds that the requirements set forth in section IV.C above regarding the compensability of relief contributions made by Governments are satisfied. As a result, the Panel determines that this portion of the Claim is compensable, to the extent that it is supported by sufficient documentary and other appropriate evidence.

131. With regard to the portion of the Claim for the costs of NBC protection equipment and medical equipment provided to the Kurdish refugees, the Panel notes that, despite a request in the article 34 notification, the Claimant has not provided an explanation as to, first, the date on which the equipment was provided; second, the basis for the supply thereof; and third, why it considers the contribution of the equipment to be a loss directly resulting from Iraq's invasion and occupation of Kuwait. In the absence of such information, the Panel is unable to determine whether this portion of the Claim is for costs resulting directly from Iraq's invasion and occupation of Kuwait. Consequently, the Panel recommends no award of compensation for this portion of the Claim. 45/

132. With regard to the remaining portions of the Claim, the Panel finds that they either relate to the participation of the Netherlands in the military operations "Desert Shield" and "Desert Storm"; or that the Claimant did not, despite a request in the article 34 notification, provide a sufficient explanation for the Panel to determine the purpose or nature of the costs being claimed. The Panel finds that the participation of the Netherlands in the above-mentioned military operations constitutes "military operations against Iraq" within the meaning of Governing Council decision 19. 46/ Consequently, for the reasons given in section IV.B

above, the costs of these military operations are not compensable. The Panel further finds that, in the absence of the requested explanations for the remainder of the claims, the Panel is unable to determine whether they are for costs resulting directly from Iraq's invasion and occupation of Kuwait. Consequently, those claims also are not compensable.

(iii) Recommendation

133. The Panel recommends an award in the amount of NLG 226,022 (US$133,111) for public service expenditures.

6. Recommendation for the Kingdom of the Netherlands

134. Based on its findings regarding the Claims filed by the Kingdom of the Netherlands, the Panel recommends compensation in the amount of US$220,086.

Table 3. Recommended compensation for the Kingdom of the Netherlands

Claim element	Claim amount (original currency) (NLG)	Claim amount (US$)	Recommended compensation (US$)
1. Ministry of Foreign Affairs			
Contract	424,650	241,141	nil
Real property	4,564	2,592	2,422
Other tangible property	319,049	181,175	84,553
2. Ministry of Transport, Public Works and Water Management			
Contract	725,457	411,957	nil
3. Ministry of Finance			
Public service expenditures	2,697,768	1,531,952	nil
4 Ministry of Foreign Affairs, General Affairs Department			
Public service expenditures	257,809	146,399	nil
5. Ministry of Defence			
Public service expenditures	58,308,007	33,110,737	133,111
Total	62,737,304	35,625,953	220,086

D. Islamic Republic of Pakistan

1. Cabinet Division, Emergency Relief Cell (UNCC Claim No. 5000103)

135. The Claim by the Cabinet Division, Emergency Relief Cell seeks 526,000,000 Pakistan rupees ("PKR") as compensation for evacuation costs

incurred following Iraq's invasion of Kuwait. On the basis of its review of the Claim, the Panel has reclassified the individual loss items of the Claim into three loss types - evacuation costs, public service expenditures and payment or relief to others.

136. According to the Claimant, the Government of Pakistan received financial contributions from (a) the Government of the Kingdom of Norway ("Norway") in the amount of US$2.58 million (equivalent to 15 million Norwegian kroner) as partial reimbursement for cash assistance paid to evacuees upon their arrival in Pakistan and for the cost of providing transport, food and reception facilities in Pakistan to evacuees, and (b) the Commission of the European Community (the "European Commission") in the amount of US$4.45 million (equivalent to 3.4 million European Currency Units) as partial reimbursement for the cost of transporting evacuees to Pakistan by air. Norway and the European Commission were each requested to confirm what their financial contributions related to and the dates they were provided. The response received from Norway indicates that its financial contribution was transferred on 17 December 1990 to the Government of Pakistan "for exclusive coverage of costs for the repatriation of refugees from the Middle East." No response was received from the European Commission.

137. The information provided does not allow the amount of Norway's contribution to be apportioned precisely between the two components identified by the Claimant as comprising such contribution. In the absence of a precise apportionment, the Panel has therefore dealt with Norway's contribution under the loss type "payment or relief to others", and the European Commission's contribution under the loss type "evacuation costs".

(a) Evacuation costs

(i) Facts and contentions

138. At the time of Iraq's invasion of Kuwait, over 100,000 Pakistani nationals were residing in either Kuwait or Iraq. 47/ During the period from August to October 1990, the Claimant organized a large-scale evacuation operation to repatriate a great number of these individuals by air, land and sea. At the request of the Government of Pakistan, Pakistan International Airlines ("PIA") made special flights to Amman and Riyadh and repatriated over 18,800 people. The Government of Pakistan also requested Pakistan National Shipping Corporation ("PNSC") to assist in the evacuation effort by sending the vessel M.V. Shams from Karachi to Aqaba to repatriate 1,659 people. The Pakistani Embassies in Amman, Ankara, Riyadh, Tehran and

Damascus, and the Office of the Relief Commissioner in Baluchistan, were also extensively involved in the evacuation effort and helped to provide basic necessities to the evacuees.

139. The majority of Pakistani nationals who fled from Kuwait and Iraq returned overland to Pakistan through Turkey and Iran. The Government of Pakistan arranged bus transportation from Turkey and Iran for some of these evacuees, but the majority entered Pakistan through the border with Iran in private passenger vehicles.

140. The Claimant seeks compensation for the cost of the PIA and PNSC operations, for the overland transportation provided to the evacuees, and for the evacuation expenses incurred by Pakistan's Embassies and the Office of the Relief Commissioner in Baluchistan.

141. The Claimant also seeks compensation for the cost of purchasing food, shelter, blankets, medicine and other basic necessities for the evacuees and for the cost of distributing these necessities. In addition, the Claimant seeks compensation for the cost of providing security escorts, food and shelter to foreign evacuees travelling overland through Pakistan.

142. The Claimant seeks compensation in the total amount of PKR 222,248,184 in respect of evacuation costs.

(ii) Analysis and valuation

143. The Panel considers that the principles governing the compensability of claims for evacuation costs, as identified at paragraph 44 above, are applicable to this portion of the Claim of the Cabinet Division, Emergency Relief Cell.

144. On the basis thereof, the Panel recommends an award of compensation for the costs incurred by the Claimant (a) in transporting evacuees to and, in the case of foreign evacuees, through Pakistan, (b) in purchasing and distributing food, shelter, blankets, medicine and other basic necessities to evacuees, and (c) in providing for the safe journey of evacuees to their home states, to the extent that such costs are supported by sufficient documentary and other appropriate evidence.

145. The Panel finds that the European Commission's financial contribution of US$4.45 million was provided to the Government of Pakistan to offset a portion of the evacuation costs of the Cabinet Division, Emergency Relief

Cell. In this context, the Panel notes that paragraph 3.b. of Governing Council decision 13 states:

> "When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories 'C', 'D', 'E' and 'F' has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss." 48/

146. The Panel therefore finds that US$4.45 million 49/ shall be deducted from the total amount of evacuation costs that the Panel would have otherwise recommended for compensation.

(iii) Recommendation

147. The Panel recommends an award in the amount of PKR 122,393,976 (US$5,601,555) for evacuation costs, after deduction of the financial contribution provided by the European Commission.

(b) Public service expenditures

(i) Facts and contentions

148. The Claimant claims PKR 207,849 for operational costs it incurred in connection with its evacuation and repatriation effort, such as overtime, travel costs and daily allowances for Government officials, stationery costs incurred in the provision of cash assistance to the evacuees upon their arrival in Pakistan, and honoraria paid to Government officials "for performing laborious duties in connection with the repatriation of Gulf War affectees".

(ii) Analysis and valuation

149. The Panel considers that the principles governing public service expenditures of a general nature, as set out in paragraphs 56 and 57 above, are applicable to this portion of the Claim of the Cabinet Division, Emergency Relief Cell.

150. Applying these principles, the Panel finds that the Claimant incurred the expenses in the exercise of its "protective functions in times of emergency" and that the expenses were not of such an extraordinary nature as to warrant their compensability.

(iii) Recommendation

151. The Panel recommends no award of compensation for public service expenditures.

(c) Payment or relief to others

(i) Facts and contentions

152. The Claimant seeks PKR 295,409,935 as compensation for cash assistance provided to 53,079 evacuees upon their arrival in Pakistan. The cash assistance was made available by the Claimant to each Pakistani "bread-earner" evacuated from Kuwait or Iraq in an amount of up to PKR 6,000 to enable them and their families to reach their final destinations in Pakistan.

153. Compensation is also sought for a total of PKR 8,133,944 in respect of costs incurred in purchasing and transporting food and relief goods to Kuwait, Iran and Turkey. The evidence provided by the Claimant in response to the article 34 notification indicates, however, that the food and relief goods were purchased and dispatched to Iran and Turkey for the "Iraqi Kurd refugees" pursuant to a communication of the Cabinet Division dated 16 June 1991.

(ii) Analysis and valuation

154. With regard to the portion of the Claim relating to cash assistance provided to evacuees, the Panel notes that in the First Report it held that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq" are compensable. 50/ Furthermore, in the Third Report, the Panel reviewed a similar claim for cash advances made to assist evacuees with the cost of the final part of their homeward journey and determined that the cash advances were payments made by a Government for "temporary and extraordinary expenses" that resulted from individuals' departure from Iraq and Kuwait and, as such, are compensable. 51/

155. The Panel finds that the same principles are applicable here, and that the cash assistance was for temporary and extraordinary living expenses. The Panel therefore determines that the claim for cash assistance is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

156. With regard to the food and relief goods provided to the "Iraqi Kurd refugees", the date of the decision to provide assistance and the destination of the goods suggest to the Panel that the goods were provided by the Government of Pakistan pursuant to Security Council resolution 688 (1991). In the absence of evidence to the contrary, the Panel concludes that this portion of the Claim is not for losses resulting directly from Iraq's invasion and occupation of Kuwait and, as such, is not compensable. 52/

157. The Panel finds that Norway's financial contribution of US$2.58 million was provided to the Government of Pakistan to offset a portion of the payment or relief to others costs of the Cabinet Division, Emergency Relief Cell. The Panel therefore finds that based on paragraph 3.b. of Governing Council decision 13, US$2.58 million 53/ shall be deducted from the total amount of expenditures for payment or relief to others that the Panel would have otherwise recommended for compensation.

(iii) Recommendation

158. The Panel recommends an award in the amount of PKR 238,907,935 (US$10,934,002) for payment or relief to others, after deduction of the financial contribution provided by Norway.

2. Revenue Division (UNCC Claim No. 5000104)

(a) Payment or relief to others

(i) Facts and contentions

159. In view of the large number of Pakistani nationals who fled Iraq and Kuwait following Iraq's invasion and occupation of Kuwait and who made their way back to Pakistan overland, the Revenue Division granted, as a humanitarian gesture, an exemption from import taxes normally due on vehicles to all the evacuees who arrived in Pakistan by road. According to the Claimant, 7,414 vehicles registered in Kuwait prior to 31 July 1990 were granted such exemptions. The sum of PKR 4,448,000,000 was originally sought by the Revenue Division as compensation for the tax that was not levied on these vehicles. However, in its response to the article 34 notification, the Claimant indicated that only 7,269 vehicles benefited from the exemption and, accordingly, reduced its Claim to PKR 3,887,000,000.

(ii) Analysis and valuation

160. The article 34 notification required the Claimant to provide, inter alia, details of the numbers of cars that entered Pakistan from Kuwait and Iraq for the corresponding seven-month period from August to March during the five years preceding Iraq's invasion of Kuwait. The Claimant responded that "in normal circumstances the import of vehicles from Kuwait and Iraq during the period under reference was negligible. The only significant import of vehicles from ... Kuwait and Iraq was recorded in the year 1990-1991 by these vehicles brought by the fleeing Pakistanis from Kuwait via Iraq".

161. On the basis of the above response, the Panel finds that but for Iraq's invasion of Kuwait, the vehicles would not have entered Pakistan and no import tax would have been levied. The Claimant thus had no expectation of earning the import tax on the vehicles. The invasion and occupation of Kuwait gave the Claimant an opportunity to earn such tax, but it chose not to levy it. In the Panel's view the Claimant is seeking compensation for the loss of what would have been windfall profits. 54/

(iii) Recommendation

162. The Panel recommends no award of compensation for payment or relief to others.

3. Recommendation for the Islamic Republic of Pakistan

163. Based on its findings regarding the Claims filed by the Islamic Republic of Pakistan, the Panel recommends compensation in the amount of US$16,535,557.

Table 4. Recommended compensation for the Islamic Republic of Pakistan

Claim element	Claim amount (original currency) (PKR)	Claim amount (US$)	Recommended compensation (US$)
1. Cabinet Division, Emergency Relief Cell			
Evacuation costs	222,248,184	10,223,008	5,601,555
Public service expenditures	207,849	9,561	nil
Payment or relief to others	303,543,879	13,962,460	10,934,002
2. Revenue Division			
Payment or relief to others	3,887,000,000	178,794,848	nil
			16,535,557

E. The Republic of the Philippines - Consolidated Claim (UNCC Claim No. 5000276)

164. The Government of the Republic of the Philippines originally sought US$32,017,236 as compensation for the costs incurred and losses suffered by two Government departments - the Department of Foreign Affairs (the "DFA") and the Overseas Workers Welfare Association (the "OWWA") - and by the Central Bank of the Philippines (the "CBP"). In a submission dated 8 July 1999, the Claimant attempted to increase the total amount of its Claim to US$42,124,039. The claims of each entity, as reclassified by the Panel, are addressed in turn.

165. The Panel notes that, according to the "Report and Recommendations made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", 55/ approximately 41,000 Philippine nationals left Kuwait and Iraq in August and September 1990. A significant portion of the Claim relates to the evacuation of these nationals and/or relief provided to them.

1. Department of Foreign Affairs

(a) Evacuation costs

(i) Facts and contentions

166. The DFA seeks US$1,047,998 56/ as compensation for costs incurred by the Philippine Embassies in Iraq and Kuwait in the period from August to November 1990 in evacuating Philippine contract workers. The costs relate principally to the rental of buses to transport evacuees from Kuwait to Iraq and from there to Jordan, the purchase of entry visas into Jordan, provision of food and medical assistance, and operational costs such as accommodation for officials, telephone and photocopying costs, stationery and bank charges.

(ii) Analysis and valuation

167. In previous instalments the Panel established principles for the compensability of claims for evacuation costs, as set out in paragraph 44 above. The Panel recommends compensation for all claimed evacuation costs that fall within these principles to the extent that they are supported by sufficient documentary and other appropriate evidence. However, in accordance with the reasoning set out in paragraphs 56 and 57 above, no compensation is recommended for general operational costs incurred by

Government departments and officials involved in the evacuation operations since they are not of such an extraordinary nature as to warrant their compensability.

168. The Panel notes that the evidence submitted by the Claimant demonstrates that the amount of the compensable loss was in excess of the amount claimed. However, the Panel cannot recommend more than the amount claimed. Accordingly, the recommended award is limited to the amount claimed.

(iii) Recommendation

169. The Panel recommends an award in the amount of US$1,047,998 for evacuation costs.

(b) Other

(i) Facts and contentions

170. The DFA seeks US$300,000 as compensation for the estimated costs of preparing and pursuing its claim before the Commission, which includes legal fees, travel expenses and other related costs.

171. Further, compensation was originally sought in the amount of US$1,850,089 in respect of "opportunity losses" incurred during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the DFA provided an updated calculation of the claimed "opportunity losses" in the amount of US$2,378,685 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

172. For the reasons set out in section IV.D above, the Panel takes no action in respect of the DFA's claim for the costs of preparing and pursuing its claim.

173. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with *UNCC Decision No. 16 which provides that interest will be awarded*". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the DFA. Given the Claimant's characterization of its claim as one for

interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

174. The Panel makes no recommendation in respect of the DFA's claims for other costs and losses.

2. Overseas Workers Welfare Association

(a) Other tangible property

(i) Facts and contentions

175. The OWWA claims US$34,988 57/ as compensation for office furnishings and supplies belonging to the OWWA in Kuwait and Iraq, and for a motor vehicle belonging to the OWWA in Kuwait that, the Claimant asserts, was stolen during the occupation.

(ii) Analysis and valuation

176. In accordance with the principles referenced in paragraph 110 above, the Panel considers that claims for loss or damage to other tangible property located in Iraq and Kuwait are compensable to the extent that the losses are supported by sufficient documentary and other appropriate evidence, deductions being made for depreciation.

177. The Panel considers that the Claimant submitted sufficient evidence to demonstrate that losses were suffered in Kuwait but not in Iraq. Accordingly, the Panel recommends compensation only for tangible property losses suffered in Kuwait.

(iii) Recommendation

178. The Panel recommends an award in the amount of US$13,917 for tangible property losses.

(b) Payment or relief to others

(i) Facts and contentions

179. The OWWA seeks US$767,760 as compensation for financial assistance payments made to evacuees from Kuwait and Iraq upon their arrival in the

Philippines "to assist in their evacuation and resettlement from the Middle East".

(ii) Analysis and valuation

180. The Panel notes that in the Third and Fourth Reports it considered similar claims for financial assistance to be compensable. 58/ Accordingly, the Panel finds that the payments in the present claim are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

181. The Claimant provided contemporaneous lists and disbursement vouchers demonstrating that approximately 5,800 individuals or families each received a net financial assistance payment of 2,760 Philippine pesos ("P"). The Panel finds these payments are compensable. However, certain unidentified and unexplained administrative or handling costs are not compensable.

(iii) Recommendation

182. The Panel recommends an award in the amount of US$570,926 for payment or relief to others.

(c) Evacuation costs

(i) Facts and contentions

183. The OWWA originally sought US$15,079,584 as compensation for the costs it incurred in evacuating Philippine contract workers from the Middle East to the Philippines. Of this amount, US$9,612,234 related to the alleged cost billed by Philippine Airlines ("PAL") in operating an air bridge to evacuate Philippine nationals from the Persian Gulf area. In its response to the article 34 notification, the Claimant reduced the latter amount to US$3,192,881, stating that US$6,419,353 was included in PAL's category "E" claim. Consequently, the total claimed amount was reduced to US$8,660,231.

184. The individual components of the claim, as amended, are as follows: US$4,069,202 for the cost of chartering aircraft from PAL and purchasing tickets on various other airlines; US$1,109,331 for operational and logistical expenses, including costs of food, shelter, transport and medical assistance provided to the workers, expenses of officials in the Middle East and administrative expenses; US$3,192,881 in respect of an

amount billed by PAL in operating an air bridge from the Persian Gulf to the Philippines; and US$288,817 for certain evacuation related expenses incurred by Philippine Embassies.

(ii) Analysis and valuation

185. The Panel considers that the principles governing the compensability of evacuation costs developed in earlier instalments, as identified in paragraph 44 above, are applicable to the OWWA claim. Consequently, the Panel recommends compensation for all claimed evacuation costs that fall within these principles, to the extent that they are supported by sufficient documentary and other appropriate evidence. However, in accordance with the reasoning set out in paragraphs 56 and 57 above, compensation is not recommended for general operational costs incurred by Government departments and officials involved in the evacuation operations since they are not of such an extraordinary nature as to warrant their compensability.

186. The Panel has ensured that the expenses claimed by the OWWA have not been duplicated in the claim of the DFA.

(iii) Recommendation

187. The Panel recommends an award in the amount of US$4,014,229 for evacuation costs.

(d) Other

(i) Facts and contentions

188. The OWWA seeks US$600,000 as compensation for the estimated costs of preparing and pursuing its claims before the Commission, as well as US$2,177,225 in respect of a "contingent fee of [a] private law firm retained by OWWA".

189. In addition, compensation was originally sought in the amount of US$5,889,916 in respect of "opportunity losses" incurred during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the OWWA provided an updated calculation of the claimed "opportunity losses" in the amount of US$11,615,177 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

190. For the reasons set out in section IV.D above, the Panel takes no action in respect of the costs of preparing and pursuing the OWWA's claims, nor with respect to the "contingent fee", which the Panel finds to be a claim for preparation costs.

191. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with UNCC Decision No. 16 which provides that interest will be awarded". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the OWWA. Given the Claimant's characterization of its claim as one for interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

192. The Panel makes no recommendation in respect of the OWWA's claims for other costs and losses.

3. Central Bank of the Philippines

(a) Payment or relief to others

(i) Facts and contentions

193. The CBP seeks US$1,920,257 as compensation for Kuwaiti dinar banknotes that the Central Bank of Kuwait refused to redeem. According to the Claimant, during the occupation of Kuwait, Iraqi forces pillaged banknotes from the vault of the Central Bank of Kuwait. These banknotes were put in circulation and some came into the possession of Philippine nationals working in Kuwait who took the banknotes with them when they were evacuated. The CBP authorized the purchase of these banknotes in small amounts to alleviate the financial hardship of the evacuees. However, when the CBP attempted to redeem the Kuwaiti dinar banknotes, the Central Bank of Kuwait refused to accept approximately one-quarter of them on the ground that they formed part of the series that had been stolen and subsequently cancelled.

194. The CBP also seeks US$79,857 as compensation for Iraqi dinar banknotes that the CBP had purchased from repatriated Philippine workers in the same manner as the Kuwaiti dinar banknotes.

195. The article 34 notification requested the CBP to submit the Kuwaiti dinar and Iraqi dinar banknotes which form the basis of their claims. The banknotes were received for verification by the Commission in July 1999.

(ii) Analysis and valuation

196. With regard to the claim for the irredeemable Kuwaiti dinar banknotes, the Panel recalls that, in the First Report, the Panel considered the claim of the Sri Lankan Honorary Consul in Jordan. He had, as a humanitarian gesture, exchanged Kuwaiti dinars on behalf of evacuees fleeing Kuwait to provide them with hard currency. The Honorary Consul could not redeem some of the banknotes as they belonged to the cancelled series. The Panel noted that Governing Council decision 7 provided that losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during the period in connection with the invasion or occupation" should be considered as direct losses. 59/ In this regard, the Panel found that:

> "There is a direct link between the theft and circulation of the Central Bank of Kuwait's dinar banknotes by Iraqi officials and the loss incurred by the Claimant. The evidence also demonstrates that the exchanges were made in small amounts in order to provide the Sri Lankan refugees in Jordan with temporary and extraordinary assistance during their evacuation from the region. ... Consequently, the Panel decides that the Claimant's loss arising out of its receipt of stolen Kuwaiti dinar banknotes should be compensated to the extent it is adequately supported by documentary or other appropriate evidence." 60/

197. In the present case, the Panel finds that the evidence demonstrates that the exchanges made by the CBP constituted a form of temporary and extraordinary assistance to evacuees. Accordingly, the Panel determines that the CBP's loss arising out of its exchange of stolen Kuwaiti dinar banknotes is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

198. With regard to the claim for the Iraqi dinar banknotes in the CBP's possession, the Panel notes that, despite a request in the article 34 notification to provide an explanation of the nature of the loss, the only explanation that has been provided is that the banknotes "could not be repatriated to Iraq during the Gulf War". No details have been provided of the attempts that have been made since the end of the occupation of Kuwait to redeem the dinars, nor of the basis adopted by the CBP to value its

claim. The Panel finds that the Iraqi dinar banknotes must be treated differently from the Kuwaiti dinar banknotes as the former were not cancelled. The Panel also finds that although it is possible that the CBP may have suffered a loss with regard to these banknotes, in the absence of any explanation as to the nature of the loss, it cannot recommend any compensation.

(iii) Recommendation

199. The Panel recommends an award in the amount of US$1,920,257 for the irredeemable Kuwaiti dinar banknotes in the possession of the CBP. No award of compensation is recommended in respect of the Iraqi dinar banknotes.

(b) Other

(i) Facts and contentions

200. The CBP seeks US$300,000 for the estimated costs incurred in preparing and pursuing its claim before the Commission.

201. In addition, compensation was originally sought in the amount of US$1,969,562 in respect of "opportunity losses" incurred, in respect of the irredeemable banknotes, during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the CBP provided an updated calculation of the claimed "opportunity losses" in the amount of US$2,532,294 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

202. For the reasons set out in section IV.D above, the Panel takes no action in respect of the CBP's claim for the costs of preparing and pursuing its claim.

203. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with UNCC Decision No. 16 which provides that interest will be awarded". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the CBP. Given the Claimant's characterization of its claim as one for interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

204. The Panel makes no recommendation in respect the CBP's claim for other costs and losses.

4. Recommendation for the Republic of the Philippines

205. Based on its findings regarding the Claim of the Republic of the Philippines, the Panel recommends compensation in the amount of US$7,567,327.

Table 5. Recommended compensation for the Republic of the Philippines

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
1. Department of Foreign Affairs		
Evacuation costs	1,047,998	1,047,998
Other a/	4,528,774	nil
2. Overseas Workers Welfare Association		
Other tangible property	34,988	13,917
Payment or relief to others	767,760	570,926
Evacuation costs	8,660,231	4,014,229
Other a/	20,282,318	nil
3. Central Bank of the Philippines		
Payment or relief to others	2,000,114	1,920,257
Other a/	4,801,856	nil
Total	42,124,039	7,567,327

a/ These loss types include an interest component. See section IV.G above.

F. Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka (UNCC Claim No. 5000081)

1. Payment or relief to others

(a) Facts and contentions

206. The Central Bank of Sri Lanka seeks compensation for Kuwaiti dinar banknotes brought into the country by evacuated Sri Lankan nationals and exchanged by commercial banks under the direction and authority of the Central Bank of Sri Lanka. According to the Claimant, the Central Bank of Kuwait refused to accept these notes from the Central Bank of Sri Lanka on the ground that they formed part of a stolen and subsequently cancelled series. The Central Bank of Sri Lanka seeks compensation in the amount of KD 871,127.

207. In its response to the article 34 notification, the Claimant advised that the banknotes had been returned by the Central Bank of Kuwait to the Embassy of Sri Lanka in Kuwait. A verification team composed of two members of the secretariat inspected the banknotes at the Embassy of Sri Lanka in Kuwait.

(b) Analysis and valuation

208. The evidence establishes that the Kuwaiti dinar banknotes were exchanged in small amounts in order to provide evacuees with a form of temporary and extraordinary assistance. Accordingly, for the reasons stated at paragraph 196 above, the Panel finds that the Claimant's loss arising out of its exchange of stolen Kuwaiti dinar banknotes is compensable to the extent it is supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

209. The Panel recommends an award in the amount of KD 855,352 (US$2,959,696) for payment or relief to others.

2. Recommendation for the Democratic Socialist Republic of Sri Lanka

210. Based on its findings regarding the Claim of the Democratic Socialist Republic of Sri Lanka, the Panel recommends compensation in the amount of US$2,959,696.

Table 6. Recommended compensation for the Democratic Socialist Republic of Sri Lanka

Claim element	Claim amount (original currency) (KD)	Claim amount (US$)	Recommended compensation (US$)
Payment or relief to others	871,127	3,014,280	2,959,696
Total	871,127	3,014,280	2,959,696

G. Republic of Tunisia - Tunisian Agency for Employment (UNCC Claim No. 5000302)

1. Payment or relief to others

(a) Facts and contentions

211. The Claimant seeks compensation in the total amount of US$1,000,000 for payments made to some 300 evacuees.

(b) Analysis and valuation

212. Despite a request in the article 34 notification for information as to the nature of the payments made to the evacuees and evidence that the payments had, in fact, been made, the Claimant failed to provide any explanation or evidence in support of the Claim.

213. In the absence of any further information and evidence in support of the Claim, the Panel cannot determine whether the loss for which compensation is claimed was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this portion of the Claim is not compensable.

(c) Recommendation

214. The Panel recommends no award of compensation for payment or relief to others.

2. Public service expenditures

(a) Facts and contentions

215. The Claimant seeks compensation in the total amount of US$200,000 for extraordinary expenses incurred in reintegrating Tunisian evacuees from Kuwait.

(b) Analysis and valuation

216. The article 34 notification requested the Claimant to provide a detailed explanation as to the basis of its claim for extraordinary expenses, together with evidence indicating how the money was spent. The Claimant's response did not provide any relevant information or documents.

217. In the absence of any further information and evidence in support of this portion of the Claim, the Panel cannot determine whether the loss for which compensation is claimed was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this portion of the Claim is also not compensable.

(c) Recommendation

218. The Panel recommends no award of compensation for public service expenditures.

3. Recommendation for the Republic of Tunisia

219. Based on its findings regarding the Claim of the Republic of Tunisia, the Panel recommends no award of compensation.

Table 7. Recommended compensation for the Republic of Tunisia

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
Payment or relief to others	1,000,000	nil
Public service expenditures	200,000	nil
Total	1,200,000	nil

H. Republic of Turkey

1. Ministry of Communications: General Directorate of State Airports (UNCC Claim No. 5000152)

(a) Contract

(i) Facts and contentions

220. The Ministry of Communications originally sought the principal amount of US$81,279, together with interest thereon in the amount of US$41,058, as compensation for amounts owed to it by Iraqi Airways for the rental of offices at the Atatürk International Airport, Ankara and for airport services provided to Iraqi Airways at international airports in Turkey. The evidence indicates that the rental of offices covered the period from October 1990 to September 1994 and that the provision of airport services covered the period from January 1990 to September 1994.

221. In communications dated 4 February 1997 and 24 November 1997, the Claimant submitted updated interest calculations in the amounts of US$18,532 and US$3,357, respectively. In addition, the 24 November 1997 communication attempted to increase the principal amount claimed for rent and for the provision of airport services by US$117,387, together with interest thereon in the amount of US$36,216. In the same communication the Claimant sought compensation for two new claims: US$90,101 and interest thereon in the amount of US$23,792 for services provided by Turkish airports to the aircraft of the "Combined Task Force", and US$28,870,028 for loss of expected "income" to the Claimant as a result of the cancellation of flights between Turkey and Iraq pursuant to the United Nations embargo. Finally, in its March 1999 response to the article 34 notification, the Claimant reduced the principal amount of its claim of US$198,666 for rent and airport services by US$1,000 because of a calculation error.

(ii) Analysis and valuation

222. In accordance with the principles set out in section IV.A above, the Panel determines that the decrease of the claimed amount in the response to the article 34 notification is admissible and that the increases to the claims for rent and airport services are admissible because those increases were made prior to 11 May 1998. However, the Panel considers that claims for services provided to the "Combined Task Force" and for the loss of

expected income, first raised in the communication dated 24 November 1997, are new claims and, as such, are not admissible as they are time-barred.

223. With regard to the airport services provided prior to the date of Iraq's invasion of Kuwait, the Panel notes that paragraph 16 of Security Council resolution 687 (1991) states:

> "[T]hat Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

224. The Panel further notes that the category "E2" Panel, in its first report, considered the issue of the compensability of Iraq's debts existing at the time of the invasion and occupation of Kuwait and made the following determination:

> "[T]he Panel finds that a rule which best implements the Security Council's intention in resolution 687 (1991) is the following:
>
> > In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.
>
> 'Performance' as understood by the Panel for purposes of this rule can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance." 61/

225. The Panel considers that the same reasoning is applicable here. Consequently, that portion of the Claim relating to airport services provided prior to 2 May 1990 is not compensable. The claim relating to losses resulting from the provision of airport services between 2 May and 2 August 1990 is, however, compensable, to the extent that such losses are supported by sufficient documentary and other appropriate evidence.

226. With regard to the offices and airport services provided after 2 August 1990, the Panel notes that by resolution 661 (1990), the United Nations Security Council imposed a trade embargo on Iraq commencing on 6 August 1990. However, given that the facts regarding the provision of offices and airport services after 2 August 1990 remain unclear, and that a literal interpretation of that resolution does not suggest on the face of it that these services outside Iraq are covered, the Panel considers that the trade embargo does not preclude compensation in this case. Nevertheless, upon the commencement of military operations of the Allied Coalition Forces against Iraq on 16 January 1991, and particularly given that Turkey was a member of the Allied Coalition Forces, the Claimant should have taken steps to mitigate its losses by ceasing the provision of offices and airport services. The Panel finds that at that time it should have been clear to the Claimant that the possibility of continuing a contractual relationship with Iraqi Airways was seriously jeopardized. Accordingly, those portions of the Claim relating to offices and airport services provided after 16 January 1991 are not compensable.

227. Consequently, the Panel finds that the portions of the Claim in respect of the provision of offices between October 1990 and 16 January 1991 and in respect of airport services between 2 August 1990 and 16 January 1991 are compensable, to the extent that these losses are supported by sufficient documentary and other appropriate evidence.

228. The Panel finds the portion of the Claim relating to interest falls within the scope of Governing Council decision 16, as discussed in section IV.G above.

(iii) Recommendation

229. The Panel recommends an award in the amount of US$130,424 for contract losses and makes no recommendation in respect of interest.

2. Ministry of Public Works and Settlement: General Directorate of State Hydraulic Works (UNCC Claim No. 5000156)

(a) Public service expenditures

(i) Facts and contentions

230. The Ministry of Public Works and Settlement states that it is the main executive agency involved in the development of land and water resources in Turkey. Its principal responsibilities are the constructior

of dams and irrigation systems and the maintenance and supply of water to cities. The department employs personnel and owns machinery to be used for the execution of the above-mentioned works. According to the Claimant, during the period of Iraq's invasion and occupation of Kuwait, some of its workforce and equipment were requisitioned for the "mobilisation and deportation of some civil and military defence material against counter military operations and threat of military action" in south-eastern Turkey. Compensation in the amount of US$5,954,908 is sought in respect of amounts paid to the employees operating requisitioned heavy machinery; costs of operation, maintenance and repair of the machinery; and depreciation of the aforementioned machinery during the period of Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

231. The article 34 notification requested the Claimant to provide a detailed explanation of the nature of the activities for which the requisitioned equipment was used, as well as a copy of the decree authorizing such requisition. The Claimant's response shed no light on the nature of the operations or the use to which the machinery was put. With regard to the decree, the Claimant responded that the decree document "is officially secret and restricted to be disseminated to any third parties."

232. The Panel is unable to satisfy itself on the evidence submitted that the costs claimed were not military costs. This is particularly so given the classified nature of the relevant decree and by the type of machinery said to have been requisitioned, i.e., low-bed trailers, tractor trucks, pick-up trucks, forklifts and bulldozers: machinery normally used to transport heavy equipment and construct fortifications. The Panel therefore considers that the Claim relates to military costs, and, consequently, is not compensable for the reasons given in section IV.B above.

(iii) Recommendation

233. The Panel recommends no award of compensation for public service expenditures.

3. Recommendation for the Republic of Turkey

234. Based on its findings regarding the Claims filed by the Republic of Turkey, the Panel recommends compensation in the amount of US$130,424.

Table 8. Recommended compensation for the Republic of Turkey

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
1. Ministry of Communications: General Directorate of State Airports		
Contract a/	296,829	130,424
2. Ministry of Public Works and Settlement: General Directorate of State Hydraulic Works		
Public service expenditures	5,954,908	nil
Total	6,251,737	130,424

a/ This loss type includes an interest component. See section IV.G above.

I. United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office (UNCC Claim No. 5000077)

235. The United Kingdom originally sought compensation in the total amount of 2,948,831 pounds sterling ("GBP") for the costs incurred by five departments within the Foreign and Commonwealth Office: the Overseas Estate Department; the Support Services Department; the Consular Department; the Personnel Services Department; and the Nationality, Treaty and Claims Department. However, in a communication dated 27 April 1998 the Claimant increased the claim of the Nationality, Treaty and Claims Department by GBP 268,754, thereby increasing the total amount of the United Kingdom's Claim to GBP 3,217,585. The claims of each department, as reclassified by the Panel, are addressed in turn.

1. Overseas Estate Department

236. The Overseas Estate Department states that it is responsible for diplomatic property located in Kuwait and Iraq and seeks compensation totalling GBP 1,427,815.

(a) Contract

(i) Facts and contentions

237. The Overseas Estate Department seeks GBP 171,832 as compensation for rent paid in advance on its "diplomatic estate" in Kuwait between August

1990 and February 1991, and GBP 262,730 for legal charges "associated with lease renewal and termination" and "to meet legal termination requirements" in respect of leased property in Iraq.

(ii) Analysis and valuation

238. With regard to the portion of the Claim relating to rent paid in advance for the period of Iraq's invasion and occupation of Kuwait, the Panel notes that for the reasons given at paragraph 101 above, this portion of the Claim is not compensable.

239. With regard to the legal charges incurred in relation to property leased in Iraq, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide any explanation of the nature of the charges or submit any evidence that such charges had in fact been paid. In the absence of such information and evidence, the Panel finds that this portion of the Claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iv) Recommendation

240. The Panel recommends no award of compensation for contract losses.

(b) Real and other tangible property

(i) Facts and contentions

241. The Overseas Estate Department seeks GBP 993,253 in respect of the cost of repairing its "diplomatic estate" in Kuwait, for the deterioration of its "office compound" in Iraq, and for tangible property lost, damaged and/or looted from Kuwait and Iraq, including four paintings allegedly worth GBP 1,350 found to be missing from the British Ambassador's residence in Iraq.

(ii) Analysis and valuation

242. With regard to the claims for repair costs and deterioration, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide any evidence in support of these costs. Accordingly, the Panel finds that these claims fail to meet the Commission's evidentiary standards and should not, therefore, be compensated.

243. Similarly, the Claimant did not provide any evidence in support of its claim for lost, damaged and/or looted tangible property other than a letter from the Government Art Collection to the Claimant dated 13 July 1994 stating the loss of four paintings. Consequently, the Panel recommends an award of compensation only for the loss of these four paintings.

244. The only evidence submitted to support the value of the paintings was an estimate in the letter from the Government Art Collection. A deduction to the recommended award is therefore appropriate to reflect the absence of any further evidence as to the value of the paintings.

(iii) Recommendation

245. The Panel recommends an award in the amount of GBP 700 (US$1,357) for real and other tangible property losses.

2. Support Services Department

(a) Other tangible property

(i) Facts and contentions

246. The Support Services Department states that it is responsible for official Government transport and seeks compensation in the amount of GBP 56,185 for the loss of the official armour-plated vehicle of the British Ambassador in Kuwait.

(ii) Analysis and valuation

247. For the reasons set out in paragraph 110 above, the Panel finds that the loss suffered by the Support Services Department is compensable to the extent that it is supported by sufficient documentary and other appropriate evidence, adjustment being made for depreciation.

(iii) Recommendation

248. The Panel recommends an award in the amount of GBP 35,237 (US$68,289) for other tangible property loss.

3. The Consular Department

(a) Public service expenditures

(i) Facts and contentions

249. The Consular Department seeks compensation in the amount of GBP 771,784 for the cost of respirators and protective clothing supplied to British diplomatic missions in the Persian Gulf area.

(ii) Analysis and valuation

250. In accordance with the reasoning set out in paragraph 59 above, the costs of the respirators and protective clothing are compensable, insofar as they were supplied to British diplomatic missions in Iraq, Kuwait, Israel and Saudi Arabia. Except for the British mission in Riyadh, Saudi Arabia, the protective equipment at issue was not supplied to diplomatic missions in any of these four states. The Panel therefore finds that only the claimed costs in respect of the mission in Riyadh are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

251. In the article 34 notification the Claimant was requested to identify the areas where the respirators had been sent. In response, the Claimant provided details of the number of people for whom its diplomatic missions were responsible in Saudi Arabia, Qatar and Bahrain. On the basis of this information The Panel finds this information sufficient to estimate the number of respirators supplied or distributed to the British diplomatic mission in Saudi Arabia.

252. Further, on the basis of the information provided as to the cost of the equipment, its destination and the number of respirators returned to the Claimant at the end of the occupation of Kuwait, the Panel is also able to calculate the cost of supplying respirators to the British diplomatic mission in Saudi Arabia.

253. The Claimant did not provide sufficient details or evidence in support of the claim for the cost of protective clothing supplied to British diplomatic missions in the Persian Gulf area. Accordingly, the Panel finds that this claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iii) Recommendation

254. The Panel recommends an award in the amount of GBP 161,772 (US$313,512) for public service expenditures.

4. Personnel Services Department

(a) Payment or relief to others

(i) Facts and contentions

255. The Personnel Services Department seeks compensation in the amount of GBP 249,591 for reimbursements made for loss of personal property to 23 members of the diplomatic service who were in Iraq and Kuwait at the time of Iraq's invasion of Kuwait.

(ii) Analysis and valuation

256. In the Fourth Report, the Panel considered similar claims for reimbursements for personal property losses made by claimants who were not under any contractual obligations to reimburse their staff. The Panel determined that the effect of paragraph 36 of Governing Council decision 7, which provides that compensation is available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council", was to render "compensable claims for payments made by Governments in respect of losses for which the recipients would have been entitled to file individual claims before the Commission, to the extent that the underlying individual losses are compensable in accordance with the criteria developed by the Commission for individual claims". 62/

257. The Panel notes that, as with the recipients of the reimbursements considered in the Fourth Report, the members of the British diplomatic service in the present instalment could have filed individual claims before the Commission under categories "C" and "D" for their personal property losses. Accordingly, the Panel finds that the Personnel Services Department's claim for reimbursements is compensable in principle.

258. Despite a request in the article 34 notification to provide evidence of payment of the reimbursements as well as evidence of the underlying losses, the Claimant provided such evidence only in respect of some of the recipients of the reimbursements. Accordingly, the Panel recommends

compensation only for those payments that are supported by sufficient evidence, adjustments being made for depreciation.

(iii) Recommendation

259. The Panel recommends an award in the amount of GBP 60,257 (US$116,777) for payment or relief to others.

(b) Public service expenditures

(i) Facts and contentions

260. The Personnel Services Department also seeks compensation in the amount of GBP 125,240 for miscellaneous costs (including accommodation, telephone calls, subsistence allowances) incurred in calling diplomatic staff who had suffered personal property losses back to the United Kingdom from their subsequent postings to inspect their belongings salvaged from Kuwait.

(ii) Analysis and valuation

261. The Panel notes that despite a request in the article 34 notification to submit documents evidencing the costs for which compensation is claimed, the Claimant has not provided any evidence in support of this portion of its Claim. Accordingly, the Panel finds that this portion of the Claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iii) Recommendation

262. The Panel recommends no award of compensation for public service expenditures.

5. Nationality, Treaty and Claims Department

(a) Public service expenditures

(i) Facts and contentions

263. The Nationality, Treaty and Claims Department originally sought compensation in the amount of GBP 318,216 for the costs incurred in processing individual and corporate claims filed with the Commission by

British nationals and corporations. The amount claimed was increased by the Claimant in a communication dated 27 April 1998 to GBP 586,970.

(ii) Analysis and valuation

264. In accordance with the principles set out in section IV.A above, the increase in the amount claimed is admissible. However, for the reasons given in section IV.E above, the Panel finds that the claims processing costs are not compensable.

(iii) Recommendation

265. The Panel recommends no award of compensation for public service expenditures.

6. Recommendation for the United Kingdom of Great Britain and Northern Ireland

266. Based on its findings regarding the Claim of the United Kingdom of Great Britain and Northern Ireland, the Panel recommends compensation in the amount of US$499,935.

Table 9. Recommended compensation for the United Kingdom of Great Britain and Northern Ireland

Claim element	Claim amount (original currency) (GBP)	Claim amount (US$)	Recommended compensation (US$)
1. Overseas Estate Department			
Contract	434,562	826,164	nil
Real and tangible property	993,253	1,888,314	1,357
2. Support Services Department			
Other tangible property	56,185	106,815	68,289
3. The Consular Department			
Public service expenditures	771,784	1,467,270	313,512
4. Personnel Services Department			
Payment or relief to others	249,591	474,508	116,777
Public service expenditures	125,240	238,100	nil
5. Nationality, Treaty and Claims Department			
Public service expenditures	586,970	1,115,913	nil
Total	3,217,585	6,117,084	499,935

J. United States of America - Department of State (UNCC Claim No. 5000035)

267. The United States Department of State originally sought compensation for seven loss types, as reclassified by the Panel - contract, real property, other tangible property, payment or relief to others, evacuation costs, public service expenditures and other losses - in the total amount of US$14,435,987. However, in response to the article 34 notification, the Claimant reduced its Claim to US$14,301,987.

1. Contract

(a) Facts and contentions

268. The Department of State seeks US$478,441 as compensation for reimbursements it made to its employees in Iraq or Kuwait for personal property lost or damaged in those countries. The reimbursements were made pursuant to United States legislation governing the claims of Department of State employees for damage to, or loss of, personal property incidental to their employment service. 63/

(b) Analysis and valuation

269. With regard to the Department of State's claim for reimbursements made to employees for personal property lost or damaged in Iraq or Kuwait, the Panel finds that, for the reasons given at paragraph 35 above, the losses suffered are compensable to the extent they are supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

270. The Panel recommends an award in the amount of US$234,564 for contract losses.

2. Real property

(a) Facts and contentions

271. The Claimant seeks US$161,899 as compensation for the loss of use and enjoyment of Embassy compound properties and staff residences leased in Kuwait during the period 2 August 1990 to 2 March 1991. The amount claimed is based on the amount of rent it paid in advance for that period.

272. The Claimant also seeks US$378,027 as compensation for costs it incurred in repairing and cleaning its Embassy building and grounds in Kuwait, which suffered blast, fire, water and black soot damage during the period of Iraq's invasion and occupation of Kuwait. The Claimant hired a private contractor from the United States to carry out the repairs in 1991, and it hired labourers from Kuwait to do the clean-up work.

(b) Analysis and valuation

273. In the Second Report, the Panel considered a claim by a Government for the loss of use of its Embassy and the Ambassador's residence in Baghdad, which had not been used after 2 August 1990 as a result of the absence of diplomatic relations between that Government and Iraq. There the Panel found that, for the same reasons that a claim by a Government for the loss of rent paid in advance on a diplomatic mission which has been closed does not give rise to a claim for compensation, the loss of use of an Embassy building and Ambassador's residence does not constitute a direct loss within the meaning of paragraph 16 of Security Council resolution 687 (1991). 64/ The Panel finds that the same reasoning is applicable here in respect of the Department of State's claim for the loss of use and enjoyment of Embassy compound properties and staff residences in Kuwait, and that such loss is, therefore, not compensable.

274. With regard to the claim for costs incurred in repairing and cleaning the Claimant's Embassy building and grounds in Kuwait, the Panel considers that, for the reasons given at paragraph 104 above, these costs are compensable to the extent they are reasonable and are supported by sufficient documentary and other appropriate evidence. In this regard, the Panel has reviewed the evidence submitted and finds that, although the Claimant has sufficiently proven the circumstances of its loss, it has not provided sufficient evidence to support the full amount claimed in respect of the repair and clean-up work. Accordingly, the Panel has adjusted the amount of its recommended award to account for these evidentiary deficiencies.

(c) Recommendation

275. The Panel recommends an award in the amount of US$189,013 for real property.

3. Other tangible property

(a) Facts and contentions

276. The Claimant seeks US$124,957 as compensation for the cost of replacing damaged furnishings and fixtures at the residences in Kuwait of the United States Ambassador to Kuwait and the Deputy Chief of Mission, as well as at the United States Embassy offices there. The Claimant also seeks US$912,321 as compensation for the value of "sensitive equipment" destroyed by its staff prior to evacuation from the United States Embassies in Kuwait and Iraq in August 1990. The Claimant additionally seeks US$22,534 as compensation for the cost of transporting replacement furnishings from the United States to Kuwait in 1991 and 1992.

(b) Analysis and valuation

277. With regard to the claims for the cost of replacing damaged furnishings and fixtures, and for the value of destroyed "sensitive equipment", the Panel finds that, for the reasons given at paragraph 110 above, the losses suffered by the Claimant are compensable in principle. These losses are, however, compensable only to the extent that the circumstances and amounts of such losses are supported by sufficient documentary and other appropriate evidence.

278. The Panel considers that, although the Claimant has sufficiently proven that it suffered tangible property losses, it has not provided sufficient documentation to support the full amount claimed in respect of these losses. For example, despite a request in the article 34 notification, the Claimant did not provide invoices or other primary documents evidencing the original purchase price of the items of destroyed "sensitive equipment" and only provided documentary evidence relating to the replacement cost of some items. Accordingly, the Panel has adjusted the amount of its recommended award to account for these evidentiary deficiencies.

279. With regard to the claim for the cost of transporting replacement furnishings to Kuwait, the Panel accepts the contention of the Claimant that it was not possible, under the prevailing circumstances at the time, to find replacement furnishings of a similar make in Kuwait. A deduction is made to the recommended award, however, to reflect the absence of sufficient evidence showing that furnishings were not available from other nearby countries for less than what the Claimant paid.

(c) Recommendation

280. The Panel recommends an award in the amount of US$185,319 for other tangible property loss.

4. Payment or relief to others

(a) Facts and contentions

281. The Claimant seeks US$4,330,088 as compensation for "monetary payments" and/or health and life insurance coverage provided to approximately 700 United States citizens and their family members who were held hostage or were otherwise detained in Iraq or Kuwait after 2 August 1990. The monetary payments and insurance coverage were provided by the Claimant pursuant to United States legislation enacted to provide relief to persons who lost wages and insurance coverage while in a "hostage status" in Iraq or Kuwait. 65/

282. The monetary payments to the eligible hostages covered the period from 2 August 1990 to the date of each hostage's release from Iraq or Kuwait. On the other hand, the insurance coverage for the eligible hostages covered the period from 2 August 1990 and for 12 months following the date of each hostage's release from Iraq or Kuwait. The evidence indicates that the last of the eligible hostages was "released" on 26 February 1991.

(b) Analysis and valuation

283. The Panel considers that the monetary payments and costs of insurance coverage provided by the Department of State constitute losses sustained as a result of "hostage-taking or other illegal detention" and "payments made or relief provided by Governments or international organizations to others" within the meaning of paragraphs 34(e) and 36, respectively, of Governing Council decision 7 and are thus in principle compensable.

284. The Panel finds that the monetary payments were made to compensate for the loss of income the hostages would have earned had they not been taken hostage or otherwise illegally detained. Accordingly, the time period for which such payments are justified is the length of their detention. This is subject, however, to the principle set out by the Panel in the First Report that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed individual claims.

285. The Panel therefore recommends compensation for the monetary payments, to the extent that they are supported by sufficient documentary and other appropriate evidence and subject to the limitation set out in the paragraph above.

286. With respect to the cost of providing insurance coverage, the Panel considers that for the period of the hostage status and for a three-month transition period after a hostage's release, the insurance coverage provided by the Claimant amounted to temporary and extraordinary relief and the cost thereof was a direct result of Iraq's invasion and occupation of Kuwait. However, after the three-month transition period, the cost ceased to be temporary and extraordinary in nature.

287. Accordingly, the Panel recommends compensation for the costs of insurance coverage for a maximum period including three months following the release of each of the hostages, to the extent that the costs are supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

288. The Panel recommends an award in the amount of US$2,878,381 for payment or relief to others. 66/

5. Evacuation costs

(a) Facts and contentions

289. The Claimant seeks US$3,781,039 as compensation for transportation, food and accommodation costs that it incurred in connection with the evacuation of United States nationals from Iraq, Kuwait, Saudi Arabia, Israel and Bahrain. According to the Claimant, the majority of the evacuees left the region on chartered aircraft flights and flew to the United States via Europe. Part of the transportation costs claimed by the Department of State relate to bank wire transfer fees incurred in September 1990 in connection with charter aircraft flights hired from Iraqi Airways.

290. The Claimant also seeks US$741,753 as reimbursement for subsistence allowances paid by the Claimant to its employees and their dependants evacuated from Iraq, Kuwait, Saudi Arabia, Israel and Bahrain. The payments were intended to cover the living expenses of the employees and their dependants following their arrival in the United States for a period of up to 180 days.

291. Additionally, the Claimant seeks US$91,746 as compensation for (a) travel costs incurred in sending some of its employees to meet and assist in the logistics of evacuation flights from the Middle East and Europe to the United States, and (b) travel, meeting and video production costs relating to the Claimant's "Family Outreach" assistance programme for the families of United States nationals held hostage or otherwise detained in Iraq or Kuwait.

(b) Analysis and valuation

292. The Panel considers that the principles governing the compensability of claims for evacuation costs identified at paragraph 44 above, are applicable to the evacuation claim of the Department of State. On the basis of these principles, the Panel finds that the transportation, including the bank wire transfer fees, food and accommodation costs incurred to evacuate United States nationals from Iraq, Kuwait, Israel and Saudi Arabia are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

293. With regard to the claim for subsistence allowances, the Panel notes that in the Third and Fourth Reports it found that allowances paid to Government officials and family members after their arrival in their home State were not compensable as they "were not intended to cover 'temporary and extraordinary living expenses that result[ed] from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991'" 67/ but, rather, were "discretionary payments for ongoing ordinary living expenses ... incurred after a person has left the region". 68/ For these same reasons, the Panel finds that the Department of State's claim for subsistence allowances is not compensable.

294. The Panel considers that the principles set out in paragraphs 56 and 57 above are applicable to the Department of State's claim for the costs of its employees meeting and assisting with evacuation flights, and to its claim for the costs incurred in undertaking and implementing a programme designed to assist the families of hostages to cope with the crisis. Consequently, the Panel finds that these costs are not compensable, since they do not represent expenditures of an extraordinary nature.

(c) Recommendation

295. The Panel recommends an award in the amount of US$3,770,339 for evacuation costs.

6. Public service expenditures

(a) Facts and contentions

296. The Claimant seeks US$815,521 as compensation for the costs of establishing and operating a "Task Force" in the United States which received and responded to enquiries regarding the welfare and whereabouts of United States nationals in the Persian Gulf region and which issued travel advisories and warnings "regarding the Gulf Crisis". These costs included the cost of employee benefits, salaries and overtime, office supplies and communications equipment, and the cost of crisis management training provided to the Claimant's employees by a private company.

297. The Claimant originally sought US$2,573,661 as compensation for the increased costs of operating United States diplomatic and consular posts in Kuwait, Iraq, Saudi Arabia, Israel and Bahrain during the period from 2 August 1990 to 2 March 1991. These increased costs allegedly included employee overtime and danger pay, operational items such as hand-held radios and office supplies, the cost of transferring additional staff to the region, and the cost of purchasing protective equipment, such as gas masks, for distribution to employees and United States nationals. In its response dated 29 June 1999 to the article 34 notification, the Claimant reduced its claim for these costs to US$2,439,661.

(b) Analysis and valuation

298. The Panel considers that the principles governing public service expenditures of a general nature, as set out in paragraphs 56 and 57 above, are applicable to the Department of State's claims for the costs of the "Task Force" and the increased costs of the diplomatic and consular posts. Applying these principles, the Panel finds that the Department of State incurred the expenses in the exercise of its "protective functions in times of emergency" and that the expenses are not of such an extraordinary nature as to warrant their compensability.

299. With regard to the Department of State's claim for the costs of purchasing protective equipment, such as gas masks, for distribution to employees and United States nationals, the Panel considers that the principles set out in paragraph 59 above are applicable here. The Panel finds, however, that the Claimant produced insufficient documentary and other appropriate evidence to permit it to verify and value the Department of State's claim for the costs of protective equipment. In particular, despite a request in the article 34 notification, the Claimant did not

provide sufficient evidence of the amount and type of protective equipment purchased by its diplomatic and consular posts, nor a breakdown of the destination of such equipment. Accordingly, this claim is not compensable.

(c) Recommendation

300. The Panel recommends no award of compensation for public service expenditures.

7. Other

(a) Facts and contentions

301. The Claimant seeks US$24,000 as compensation for the costs of preparing its Claim for submission to the Commission. The Claimant also seeks interest on the compensation awarded, running from the date of the loss to the date on which payment of the award is made.

(b) Analysis and valuation

302. For the reasons set out at section IV.D above, the Panel takes no action in respect of the claim for claim preparation costs.

303. The Panel finds the claim for interest falls within the scope of Governing Council decision 16, as discussed in section IV.G above.

(c) Recommendation

304. The Panel makes no recommendation in respect of claim preparation costs and in respect of interest.

8. Recommendation for the United States of America

305. Based on its findings regarding the Claim of the United States of America, the Panel recommends compensation in the amount of US$7,257,616.

Table 10. Recommended compensation for the United States of America

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
Contract	478,441	234,564
Real property	539,926	189,013
Other tangible property	1,059,812	185,319
Payment or relief to others	4,330,088	2,878,381
Evacuation costs	4,614,538	3,770,339
Public service expenditures	3,255,182	nil
Other	24,000	nil
Total	14,301,987	7,257,616

VI. SUMMARY OF RECOMMENDATIONS

306. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the Claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Canada - Consolidated Claim: US$9,292,112;

(b) The Federal Republic of Germany - Ministry of Defence: US$63,416;

(c) The Kingdom of the Netherlands: US$220,086;

(d) The Islamic Republic of Pakistan: US$16,535,557;

(e) The Republic of the Philippines - Consolidated Claim: US$7,567,327;

(f) The Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka: US$2,959,696;

(g) The Republic of Tunisia - Tunisian Agency for Employment: NIL;

(h) The Republic of Turkey: US$130,424;

(i) The United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office: US$499,935; and

(j) The United States of America - Department of State: US$7,257,616.

Geneva, 4 February 2000

(Signed) Mr. Bjørn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure", (S/AC.26/1992/10).

2/ "F1" claims are the claims of international organizations and all Governments other than the Governments of the Hashemite Kingdom of Jordan, the State of Kuwait and the Kingdom of Saudi Arabia.

3/ The amounts include amendments made by the Claimants within the deadlines discussed in section IV.A in this Report. Portions of the Canadian, German and Netherlands Foreign Ministry claims that related to environmental losses were severed and assigned to the category "F4" Panel, appointed to review environmental claims. The amounts claimed are stated in United States dollars although many Claims were originally expressed in other currencies. In respect of Claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No.4, April 1991, (ST/ESA/STAT/SER.1/220).

4/ Category "C" claims are individual claims for damages up to US$100,000 while category "D" claims are individual claims for damages above US$100,000. Pursuant to Governing Council decision 1, (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13, (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims). It was, therefore, not necessary to carry out cross-category checks in respect of evacuation costs and departure claims in category "A".

5/ Cross-category checks revealed that compensation totalling US$4,077 was recommended in respect of the three category "C" claimants for the same losses for which compensation would otherwise have been recommended for the United States of America - Department of State. The amount of compensation recommended for the United States' claim in respect of losses for "payment or relief to others" takes into account the amounts recommended by the category "C" Panel for those three claimants.

6/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1997/6), ("the First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1998/4), ("the Second Report"), para. 45; "Report and

Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' Claims", (S/AC.26/1998/12), ("the Third Report"), para. 75; and "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of 'F1' Claims", (S/AC.26/1999/7), ("the Fourth Report"), para. 75.

7/ See the First Report, para. 62.

8/ See Letter dated 11 March 1998 from the secretariat to the Permanent Missions of States and Offices of International Organizations (UNCC/EXE/614/1998); Summary Record of the sixty-fourth Meeting of the Governing Council, (S/AC.26/SR.64), para. 10 and Provisional Summary Record of the seventy-seventh Meeting of the Governing Council, (S/AC.26/SR.77), para. 14.

9/ Governing Council decision 19, "Military Costs", (S/AC.26/Dec.19 (1994)).

10/ Governing Council decision 18, "Distribution of Payments and Transparency", (S/AC.26/Dec.18 (1994)).

11/ The Third Report, para. 118. See also, the Fourth Report, paras. 134-135.

12/ See, e.g., "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of individual claims for damages up to US$100,000 (category 'C' claims)" (S/AC.26/1994/3), (the "'C' Report"), pp. 31-32; "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' claims" (S/AC.26/1998/7), para. 279; "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' claims" (S/AC.26/1999/4), para. 227; and the First Report, para. 100.

13/ The First Report, paras. 99-102; the Third Report, paras. 126 and 128; and the Fourth Report, paras. 157-160.

14/ Ibid., and also the Second Report, para. 74.

15/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220).

16/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

17/ "United Nations Compensation Commission, Claim Forms for Governments and International Organizations (Form F)", Part "F", Summary of Losses Claimed.

18/ UNCC claim number 5000300.

19/ The Fourth Report, para. 88. See also, the First Report, paras. 67-68 and the Third Report, paras. 83-85.

20/ The principles set out in section IV.C above are not applicable here since the payment at issue does not constitute a relief contribution.

21/ The First Report, paras. 92-96 and the Third Report, paras. 100-111.

22/ The Panel recognizes that the category "E2" Panel in its "Report and Recommendations made by the Panel of Commissioners Concerning the Third Instalment of 'E2' Claims" (S/AC.26/1999/22), at paras. 69 and 70, found that there were military operations or a threat thereof affecting the land, waters and airspace of Bahrain (for the period 22 February 1991 to 2 March 1991) and Qatar (for the period 25 February 1991 to 2 March 1991). However, the Panel considers that the context and factual circumstances underlying the category "E2" Panel's determination are different from those faced by this Panel, which relate to a government's evacuation of individuals and the provision of protective measures.

23/ The payment made to Iraqi Airways for the chartering of the aircraft does not constitute a violation of the embargo imposed on Iraq; at its fifth meeting held on 31 August 1990, the United Nations Sanctions Committee decided that flights carrying passengers only would not contravene Security Council resolution 661 (1990), (S/AC.25/SR.5, 12 September 1990), reprinted in D.L. Bethlehem (Ed.), The Kuwait Crisis: Sanctions and their Economic Consequences (1991), p. 794, at p. 801.

24/ The Third Report, para. 120.

25/ Ibid., para. 121.

26/ The Fourth Report, para. 148.

27/ The First Report, para. 98.

28/ The Third Report, para. 122.

29/ The Fourth Report, para. 140.

30/ The First Report, paras. 83-84. See also the "'C' Report", p. 12.

31/ The Fourth Report, para. 117.

32/ Ibid.

33/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

34/ UNCC Claim number 5000305.

35/ Security Council resolution 688 (1991) of 5 April 1991 condemned the repression of the Iraqi civilian population in many parts of Iraq, including in Kurdish populated areas which had led to a massive flow of refugees and, in paragraph 6, appealed to all Member States and all humanitarian organizations to contribute to the humanitarian relief efforts.

36/ UNCC Claim number 5000306.

37/ The First Report, para.74. See also, the Second Report, paras. 55-56; the Third Report paras.78-79 and the Fourth Report, paras. 78-80.

38/ The Third Report, para. 81.

39/ The First Report, paras. 71-73; the Second Report, paras. 63 and 73; the Third Report, paras. 90-92 and the Fourth Report, paras. 91-92.

40/ The invoices submitted in support of this claim indicate that the repair costs amounted to KD 700, which converts to NGL 4,112 after application of the rate of exchange adopted by the Panel. See para. 27 of this Report.

41/ The First Report, paras. 76-78. See also, the Third Report, para. 94 and the Fourth Report, para. 100.

42/ "Sanction Decision on the Exchange of Trade through Aviation and Shipping, Iraq and Kuwait 1990", 10 August 1990/Nr S/J 31.434 Director-General of Shipping, Industry and Maritime Affairs/Legislation and Legal Affairs Branch, published in the Staatscourant (Government Gazette) 154 dated 10 August 1990.

43/ Governing Council decision 9, "Propositions and Conclusion on Compensation for Business Losses: Types of Damages and Their Valuation", (S/AC.26/1992/9).

44/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause", (S/AC.26/1992/15*).

45/ See also para. 71 of this Report.

46/ The Panel notes that the Netherlands was a member of the Allied Coalition Forces, and therefore subject to Governing Council decision 19.

47/ "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure From Iraq or Kuwait (Category "A" Claims)" (S/AC.26/1994/2), p. 27.

48/ Governing Council decision 13, "Further Measures to Avoid Multiple Recovery of Compensation by Claimants," para. 3.b, (S/AC.26/1992/13).

49/ In the absence of information regarding the date that the European Commission's financial contribution was received by the Government of Pakistan, the Panel proceeds to use 17 December 1990 as the date for determining the currency exchange rate for US$4.45 million. This is the date that Norway's financial contribution was transferred to the Government of Pakistan, and the Panel therefore considers it reasonable to utilize such date. Consequently, the European Commission's financial contribution of US$4.45 million converts to PKR 97,455,000, using the monthly rate for December 1990 as reported in the United Nations Monthly Bulletin of Statistics.

50/ The First Report, para. 85.

51/ The Third Report, para. 97. See also the Fourth Report, paras. 104-106.

52/ See para. 71 of this Report.

53/ Norway's financial contribution of US$2.58 million converts to PKR 56,502,000 as at 17 December 1990. See endnote 49 above.

54/ See also the discussion of windfall profits in "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' Claims", (S/AC.26/1999/4), paras. 175-181.

55/ S/AC.26/1994/2, p. 25.

56/ This figure is based on the Claimant's conversion of loss amounts it incurred in currencies other than United States dollars.

57/ This figure is based on the Claimant's conversion of loss amounts it incurred in currencies other than United States dollars.

58/ The Third Report, paras. 95-97; and the Fourth Report, paras. 104-106.

59/ Governing Council decision 7, op. cit.

60/ The First Report, para. 88.

61/ "Report of recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' Claims", (S/AC.26/1998/7), para. 90.

62/ The Fourth Report, paras. 108-109.

63/ The Military Personnel and Civilian Employees' Claims Act of 1964 (78 Stat. 767, 31 U.S.C. 24-243), as amended by Public Law No. 91-311 and Public Law No. 96-519.

64/ The Second Report, paras. 55-56.

65/ Section 599C of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law No. 101-513).

66/ The amount recommended takes into account the amounts recommended by the category "C" Panel in respect of three individual claimants, as noted in para. 9 of this Report.

67/ The Third Report, para. 106; and the Fourth Report, paras. 130-131.

68/ Ibid.

Annex VII

Decision concerning the fourth instalment of F1 claims taken by the Governing Council of the United Nations Compensation Commission at its 96th meeting, held on 15 June 2000 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fourth instalment of "F1" claims, covering 16 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 306 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Canada	1	-	47,026,391	9,292,112
Germany	1	-	66,482,479	63,416
Netherlands	2	3	35,625,953	220,086

* Previously issued as document S/AC.26/Dec.98 (2000).

1/ The text of the report appears in document S/AC.26/2000/13 (annex VI above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Pakistan	1	1	202,989,877	16,535,557
Philippines	1	-	42,124,039	7,567,327
Sri Lanka	1	-	3,014,280	2,959,696
Tunisia	-	1	1,200,000	Nil
Turkey	1	1	6,251,737	130,424
United Kingdom	1	-	6,117,084	499,935
United States	1	-	14,301,987	7,257,616
Total	10	6	425,133,827	44,526,169

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)),

4. Recalls that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex VIII

Tenth report of the Executive Secretary pursuant to article 41 of the provisional rules for Claims Procedure*

* Previously issued as document S/AC.26/2000/14.

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in categories "A" and "C".

I. CORRECTIONS TO CATEGORY "A" CLAIM AWARDS

2. Recommendations for corrections to category "A" claims include duplicate claims and decision 21 reductions reported by Governments.

A. Category "A" duplicate claims

3. Since the last article 41 report (S/AC.26/2000/10), a total of 361 claims have been found to be duplicates of other claims also awarded compensation in category "A". Out of this total, 360 claims were identified by three Governments and one claim was detected by the secretariat during the application of the cross-category checking programme.

4. The majority of the duplicate claims were located by the Government of Sri Lanka. Sri Lanka identified 560 potential duplicate claims in the fifth instalment and two potential duplicate claims in the fourth instalment. To date, the secretariat has confirmed that 346 of those claims are actual duplicates. The remaining claims identified by Sri Lanka are in the process of being verified and, if found to be duplicates, will be reported in the next article 41 report.

5. With respect to the other duplicate claims, 13 claims were reported by the Government of India and one claim, for the Federal Republic of Yugoslavia, was reported by both the Government of the Federal Republic of Yugoslavia and the Government of Bosnia and Herzegovina. As noted above, a duplicate claim for India was also detected while running the cross-category checking programme, bringing the total duplicate claims reported for India to 14. No compensation should have been awarded for the duplicate claims and the total recommended awards should be revised accordingly. Table 1, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced.

Table 1. Category "A" duplicate claims included in the tenth article 41 report

Country	Instalment	Total number of duplicate claims	Amount of reduction (USD)
India	Second	2	5,000.00
	Fourth	2	8,000.00
	Fifth	9	36,500.00
	Sixth	1	2,500.00
Sri Lanka	Fourth	2	8,000.00
	Fifth	344	1,374,500.00
Yugoslavia, Federal Republic of	Sixth	1	4,000.00
Total		361	1,438,500.00

6. The adjusted claim awards have been included in the corrected total recommended awards in annex I, infra.

B. Decision 21 corrections

7. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (USD 4,000 or USD 8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'". Three claimants from India who filed for higher amounts in category "A" have been found to have also filed claims in category "C". In accordance with decision 21, one claim in the second instalment, one claim in the third instalment and one claim in the fourth instalment have had their claim amounts adjusted downward.

8. The adjusted claim awards for the second to sixth instalments, and the total revised recommended awards for category "A" claims, are located in tables 1-6 of annex I.

II. CORRECTIONS TO CATEGORY "C" CLAIM AWARDS

9. Corrections to category "C" claim awards include corrections relating to the erroneous deduction of category "A" claim amounts made from category "C" recommendations for departure and relocation costs ("C1-Money" losses), duplicate category "C" claims identified by Governments and international organizations, and corrections relating to computational, clerical, typographical or other errors contained in the electronic category "C" claims.

A. Corrections relating to the erroneous deduction of category "A" claim amounts from C1-Money losses

10. After concluding the processing of the seventh instalment, it was ascertained that throughout each electronic processing cycle, category "C" claims had been matched against all claims in category "A", including rejected claims. As a result, some C1-Money awards were erroneously reduced on the basis that the category "C" claimants had also received awards in category "A".

11. For 126 category "C" claims with C1-Money awards, it has been determined that the corresponding category "A" claims were not awarded compensation and therefore no deduction should have been made from the C1-Money claims. As a result, 126 claims have had the deducted amounts reinstated and it is recommended that the corresponding awards be increased by a total of USD 246,177.40 as indicated in table 2.

Table 2. Corrections relating to the erroneous deduction of category "A" claim amounts from C1-Money losses

Country or international organization	Instalment	Total number of claims affected	Amount of net effect (USD)
Australia	Seventh	1	1,391.70
Bangladesh	Fourth	1	692.04
India	Fourth	2	2,208.76
	Fifth	3	4,092.52
	Sixth	2	2,757.06
	Seventh	5	6,440.95
Jordan	Fourth	15	31,421.84
	Fifth	20	42,322.92
	Sixth	31	62,767.37
	Seventh	21	59,503.83
Tunisia	Sixth	11	11,118.03
	Seventh	12	15,978.86
United Kingdom	Fourth	1	481.52

Country or international organization	Instalment	Total number of claims affected	Amount of net effect (USD)
UNHCR Bulgaria	Seventh	1	5,000.00

B. Category "C" duplicate claims

12. In response to reports from Governments, the secretariat reviewed 69 cases of potential duplicate category "C" claims. In the large majority of situations reviewed, the claims were found not to have been submitted by the same claimants for the same losses. However, it was confirmed that eight claims were in fact duplicates. In another claim, it is recommended that a personal property loss, not identified in the valid claim, be transferred from the rejected duplicate to the valid claim.

13. The awards for the eight confirmed duplicate claims were corrected to zero and the claims have been identified in the database as rejected duplicates. Because of the correction to the valid claim, a total of nine claims were affected by these actions, as reflected in table 3 below, for a net decrease of USD 87,497.54.

Table 3. Category "C" duplicate claims included in the tenth article 41 report

Country or international organization	Instalment	Number of claims affected	Amount of net effect (USD)
Canada	Fourth	1	(13,173.01)
	Seventh	1	(44,142.30)
France	Second	1	20,673.48
	Seventh	1	(27,350.32)
India	Second	1	(7,993.08)
	Fourth	1	(5,205.49)
	Fifth	1	(3,315.04)
	Seventh	1	(4,199.59)
Philippines	Sixth	1	(2,792.19)

C. Miscellaneous article 41 corrections to category "C" awards

14. For this report, more than 1,000 category "C" claims presenting specific computational, clerical, typographical or other errors were identified during reviews for discrepancies between the paper and electronic claims in accordance with the Panel's decisions and recommendations relating to loss criteria and valuation, as described in

the seventh instalment report (S/AC.26/1999/11) and as requested by submitting Governments. The majority of these corrections relate to "C6-Salary" losses for which claims have been corrected in accordance with the Panel's decisions and recommendations in paragraphs 250 to 275 of the seventh instalment report. Other corrections relate to C5-bank accounts in Iraq, as discussed at paragraphs 227 to 237 of the same report. As a result, it is recommended that corrections be implemented in 332 claims for a net increase of USD 3,009,339.04 in awarded amounts as reflected in table 4 below.

Table 4. Miscellaneous corrections to category "C" awards

Country or international organization	Instalment	Number of claims affected	Amount of net effect (USD
Australia	Sixth	1	4,734.00
Austria	Sixth	1	16,230.20
Bangladesh	Second	3	9,165.03
	Sixth	23	155,380.24
	Seventh	3	6,897.95
Canada	Sixth	1	18,181.80
Czech Republic	Fifth	4	44,306.50
	Sixth	1	10,394.37
Finland	Sixth	1	6,346.62
France	Fourth	1	17,639.49
	Sixth	1	12,285.42
	Seventh	1	(5,000.00)
India	Second	3	5,103.50
	Fourth	3	33,698.32
	Fifth	2	(684.85)
	Sixth	18	123,437.25
	Seventh	22	80,083.39
Iran, Islamic Republic of	Sixth	1	1,211.05
	Seventh	1	9,809.73
Ireland	Sixth	1	9,448.67
Israel	Sixth	7	16,506.97
	Seventh	8	49,432.93
Japan	Sixth	1	22,104.67

Country or international organization	Instalment	Number of claims affected	Amount of net effect (USD
Jordan	Second	11	118,399.87
	Fourth	4	52,426.62
	Fifth	17	232,722.39
	Sixth	49	741,311.51
	Seventh	32	422,811.30
Kuwait	Fifth	2	15,700.00
	Seventh	1	7,489.26
Lebanon	Second	1	4,844.30
	Fifth	3	30,621.77
	Sixth	2	41,656.65
	Seventh	5	56,016.89
Netherlands	Sixth	1	28,590.94
	Seventh	1	11,318.46
New Zealand	Second	1	9,371.09
	Seventh	1	7,685.83
Pakistan	Seventh	1	14,702.42
Philippines	Sixth	45	111,726.30
	Seventh	6	10,559.75
Poland	Seventh	8	19,623.86
Republic of Korea	Fifth	1	5,234.48
	Seventh	1	15,000.00
Slovenia	Sixth	4	33,290.00
Sweden	Sixth	1	3,474.03
	Seventh	1	7,588.89
Turkey	Fourth	1	6,061.78
	Sixth	4	19,877.97
United Kingdom	Second	1	52,177.22
	Fourth	2	22,693.27
	Sixth	10	139,442.50
United States	Sixth	3	64,750.00
Yemen	Seventh	3	42,179.93
UNDP Kuwait	Sixth	1	13,276.51

Annex I

CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 4-6, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. Second instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	50,855,500.00	50,847,500.00

Table 2. Third instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	16,732,500.00	16,729,500.00

Table 3. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,300,000.00	146,290,500.00
Sri Lanka	69,796,500.00	69,788,500.00

Table 4. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	147,616,500.00	147,580,000.00
Sri Lanka	71,533,000.00	70,158,500.00

Table 5. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	17,327,500.00	17,325,000.00
Yugoslavia, Federal Republic of	880,000.00	876,000.00

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 6. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,606,000.00	no change
Second	641,252,500.00	641,244,500.00
Third	531,502,000.00	531,499,000.00
Fourth	732,674,500.00	732,657,000.00
Fifth	784,542,000.00	783,131,000.00
Sixth	316,261,000.00	316,254,500.00
Special	2,554,500.00	no change

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85 and 95 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), (S/AC.26/Dec.79 (1999), (S/AC.26/Dec.85 (1999) and (S/AC.26/Dec.95 (2000)).

Annex II

CORRECTED CATEGORY "C" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 9-13, supra, the category "C" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Bangladesh	12,168,258.30	12,177,423.33
France	453,571.99	474,245.48
India	70,389,572.27	70,386,682.69
Jordan	38,902,796.72	39,021,196.59
Lebanon	26,548,582.90	26,553,427.20
New Zealand	74,026.28	83,397.38
United Kingdom	4,669,734.28	4,721,911.50

Table 2. Fourth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Bangladesh	786,885.44	787,577.48
Canada	1,243,162.58	1,229,989.57
France	493,887.55	511,527.04
India	45,946,993.90	45,977,695.49
Jordan	24,307,865.58	24,391,714.04
Turkey	1,270,834.40	1,276,896.18
United Kingdom	13,239,489.34	13,262,664.13

Table 3. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Czech Republic	146,524.31	190,830.81
India	67,715,447.22	67,715,539.85
Jordan	94,381,201.82	94,656,247.13
Kuwait	329,215,788.04	329,231,488.04
Lebanon	2,450,280.73	2,480,902.50
Republic of Korea	174,309.52	179,544.00

Table 4. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Australia	1,399,064.45	1,403,798.45
Austria	796,772.24	813,002.44
Bangladesh	21,459,510.08	21,614,890.32
Canada	9,386,296.50	9,404,478.30
Czech Republic	86,125.43	96,519.80
Finland	58,539.80	64,886.42
France	2,759,807.87	2,772,093.29
India	104,850,234.19	104,976,428.50
Iran, Islamic Republic of	12,658,608.86	12,659,819.11
Ireland	1,327,307.88	1,336,756.55
Israel	177,586.92	194,093.89
Japan	415,840.98	437,945.65
Jordan	180,891,651.27	181,695,730.15
Lebanon	11,898,155.19	11,939,811.84
Netherlands	967,778.95	996,369.89
Philippines	10,698,665.00	10,807,599.11
Slovenia	121,804.85	155,094.85
Sweden	1,219,711.70	1,223,185.73
Tunisia	3,347,597.72	3,358,715.75
Turkey	1,794,550.10	1,814,428.07

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
United Kingdom	22,200,749.80	22,340,192.30
United States	17,569,949.12	17,634,699.12
UNDP Kuwait	10,384,382.32	10,39[illegible],658.83

Table 5. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Australia	1,732,428.95	1,733,820.65
Bangladesh	37,746,419.68	37,753,317.63
Canada	11,973,474.82	11,929,332.52
France	6,589,534.21	6,557,183.89
India	186,928,200.34	187,010,525.09
Iran, Islamic Republic of	27,095,092.86 a/	27,104,902.59
Israel	4,943,872.86	4,993,305.79
Jordan	281,494,326.55	281,976,641.68
Kuwait	787,939,426.70	787,946,915.96
Lebanon	15,615,066.66	15,671,083.55
Netherlands	821,067.26	832,385.72
New Zealand	238,597.59	246,283.42
Pakistan	74,552,547.72	74,567,250.14
Philippines	10,349,808.76	10,360,368.51
Poland	731,511.47	751,135.33
Republic of Korea	2,365,481.86	2,380,481.86
Sweden	935,610.32	943,199.21
Tunisia	8,424,710.75	8,440,689.61
Yemen	79,199,517.09	79,241,697.02
UNHCR Bulgaria	285,424.54	290,424.54

a/ Due to a typographical error, the corrected total recommended award for the Islamic Republic of Iran was reported as 27,095,092.06 in the ninth article 41 report. That amount should have read 27,095,092.86 as identified herein.

Table 6. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	51,086,478.00	no change
Second	431,463,342.93	431,675,084.34
Third	324,883,154.77	no change
Fourth	654,449,206.59	654,598,151.73
Fifth	735,072,726.97	735,443,727.66
Sixth	763,875,585.72	765,543,093.66
Seventh	1,931,655,410.19	1,932,424,233.91

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994),(S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85 and 95 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999) and S/AC.26/Dec.95 (2000)).

Annex IX

Decision concerning the correction of awards for category A and C claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 96th meeting, held on 15 June 2000 at Geneva*

* Previously issued as document S/AC.26/Dec.99 (2000).

1/ The text of the report appears in document S/AC.26/2000/14 (annex VIII above).

2/ In conformity with the provisions on confidentiality in the Rules (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Table 2. Third instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	16,732,500.00	16,729,500.00

Table 3. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,300,000.00	146,290,500.00
Sri Lanka	69,796,500.00	69,788,500.00

Table 4. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	147,616,500.00	147,580,000.00
Sri Lanka	71,533,000.00	70,158,500.00

Table 5. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	17,327,500.00	17,325,000.00
Yugoslavia, Federal Republic of	880,000.00	876,000.00

Table 6. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Bangladesh	12,168,258.30	12,177,423.33
France	453,571.99	474,245.48
India	70,389,572.27	70,386,682.69
Jordan	38,902,796.72	39,021,196.59
Lebanon	26,548,582.90	26,553,427.20
New Zealand	74,026.28	83,397.38
United Kingdom	4,669,734.28	4,721,911.50

Table 7. Fourth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Bangladesh	786,885.44	787,577.48
Canada	1,243,162.58	1,229,989.57
France	493,887.55	511,527.04
India	45,946,993.90	45,977,695.49
Jordan	24,307,865.58	24,391,714.04
Turkey	1,270,834.40	1,276,896.18
United Kingdom	13,239,489.34	13,262,664.13

Table 8. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Czech Republic	146,524.31	180,836.81
India	67,715,447.22	67,715,539.85
Jordan	94,381,201.82	94,656,247.33
Kuwait	329,215,788.04	329,231,488.04
Lebanon	2,450,280.73	2,480,902.50
Republic of Korea	174,309.52	179,544.00

Table 9. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Australia	1,399,064.45	1,403,798.45
Austria	796,772.24	813,002.44
Bangladesh	21,459,510.08	21,614,890.32
Canada	9,386,296.50	9,404,478.30
Czech Republic	86,125.43	96,519.80
Finland	58,539.80	64,886.42
France	2,759,807.87	2,772,093.29
India	104,850,234.19	104,976,428.50
Iran, Islamic Republic of	12,658,608.86	12,659,819.11

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Ireland	1,327,307.88	1,336,756.55
Israel	177,586.92	194,093.89
Japan	415,840.98	437,945.65
Jordan	180,891,651.27	181,695,730.15
Lebanon	11,898,155.19	11,939,811.84
Netherlands	967,778.95	996,369.89
Philippines	10,698,665.00	10,807,599.11
Slovenia	121,804.85	155,094.85
Sweden	1,219,711.70	1,223,185.73
Tunisia	3,347,597.72	3,358,715.75
Turkey	1,794,550.10	1,814,428.07
United Kingdom	22,200,749.80	22,340,192.30
United States	17,569,949.12	17,634,699.12
UNDP Kuwait	10,384,382.32	10,397,658.83

Table 10. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Australia	1,732,428.95	1,733,820.65
Bangladesh	37,746,419.68	37,753,317.63
Canada	11,973,474.82	11,929,332.52
France	6,589,534.21	6,557,183.89
India	186,928,200.34	187,010,525.09
Iran, Islamic Republic of	27,095,092.86 a/	27,104,902.59
Israel	4,943,872.86	4,993,305.79
Jordan	281,494,326.55	281,976,641.68
Kuwait	787,939,426.70	787,946,915.96
Lebanon	15,615,066.66	15,671,083.55
Netherlands	821,067.26	832,385.72
New Zealand	238,597.59	246,283.42

Country or international organization	Previous total recommended amount (USD)	Corrected total recommended amount (USD)
Pakistan	74,552,547.72	74,567,250.14
Philippines	10,349,808.76	10,360,368.51
Poland	731,511.47	751,135.33
Republic of Korea	2,365,481.86	2,380,481.86
Sweden	935,510.32	943,199.21
Tunisia	8,424,710.75	8,440,689.61
Yemen	79,199,517.09	79,241,697.02
UNHCR Bulgaria	285,424.54	290,424.54

a/ Due to a typographical error, the corrected total recommended award for the Islamic Republic of Iran was reported as 27,095,092.06 in the ninth article 41 report. That amount should have read 27,095,092.86 as identified herein.

2. Decides also that, based on the above corrections, the revised recommended awards by instalment are as follows:

Table 11. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,606,000.00	no change
Second	641,252,500.00	641,244,500.00
Third	531,502,000.00	531,499,000.00
Fourth	732,674,500.00	732,657,000.00
Fifth	784,542,000.00	783,131,000.00
Sixth	316,261,000.00	316,254,500.00
Special	2,554,500.00	no change
Total	3,198,392,500.00	3,196,946,500.00

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85 and 95 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51

(1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), (S/AC.26/Dec.79 (1999), (S/AC.26/Dec.85 (1999) and (S/AC.26/Dec.95 (2000)).

Table 12. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	51,086,478.00	no change
Second	431,463,342.93	431,675,084.34
Third	324,883,154.77	no change
Fourth	654,449,206.59	654,598,151.73
Fifth	735,072,726.97	735,443,727.66
Sixth	763,875,585.72	765,543,093.66
Seventh	1,931,655,410.19	1,932,424,233.91

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85 and 95 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999) and (S/AC.26/Dec.95 (2000)).

Annex X

Decision concerning the priority of payment and payment mechanism for the third phase of payment taken by the Governing Council of the United Nations Compensation Commission at its 96th meeting, held on 15 June 2000 at Geneva*

The Governing Council,

Recalling its intention as stated in decision 73 (S/AC.26/Dec.73 (1999)), to consider, before the end of the second phase of payment, the rules that will apply for making further payments on those claims in categories "D", "E" and "F" that will have unpaid balances once the second phase of payment has been completed, as well as the amounts of such payments,

Recalling also, its willingness as stated in decision 73, to consider the special circumstances pertaining to successful environmental monitoring and assessment claims and, in this context, to consider addressing the level and priority to be made in respect of such claims,

1. Decides that, notwithstanding paragraph 6 of decision 17 (S/AC.26/Dec.17 (1994)), and after the payments provided for in decision 73 have been made, the funds available to the Commission for the payment of claims will be allocated as follows:

(a) Successful claimants in categories "D", "E" and "F" will receive an initial amount of US$5 million (minus the amounts received in the second phase of payment) or the unpaid principal amount of the award, if less;

(b) Subsequent payments of US$10 million (or the unpaid principal amount of the award, if less) will be made to successful claimants in categories "D", "E" and "F" in the order in which they have been approved;

* Previously issued as document S/AC.26/Dec.100 (2000).

(c) Payments will be made to successful claimants in the order in which their claims have been approved provided that all initial payments of newly approved claims will have priority over subsequent payments;

(d) If upon payment of the amounts referred to in sub-paragraphs (a) and (b) above on any claim, that claim will have a remaining balance of US$100,000 or less, the Executive Secretary may pay the full remaining balance of the claim;

(e) Successful environmental monitoring and assessment claims will be given priority in payment of the above-mentioned amounts;

(f) Payments under the third phase will be made every four months for distribution among successful claimants;

2. Decides also that, in due course, the Governing Council will consider a further payment mechanism, if appropriate.